

# CTEP | Guidelines



State of Montana  
Department of Transportation  
Community Transportation Enhancement Program

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# CHAPTER 1

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## **Introduction**

The Transportation Equity Act for the Twenty First Century (TEA-21), and its predecessor the Intermodal Transportation Efficiency Act (ISTEA), provide transportation enhancement funds for states. In Montana, the Community Transportation Enhancement Program (CTEP), which is part of the Montana Department of Transportation (MDT), administers these federal funds. CTEP allows eligible local and tribal governments to solicit, nominate, prioritize, develop, and construct enhancement projects. CTEP/MDT monitors and provides oversight of locally sponsored projects.

There are 112 county, city and tribal governments that receive CTEP allocations on an annual basis. These local and tribal governments are required to adhere to the same regulations, policies, and procedures that apply to all MDT federal aid programs. The Federal Highway Administration (FHWA) holds MDT responsible for ensuring all federal aid program requirements are met. MDT passes this responsibility on to the Local Public Agencies (LPAs).

An enhancement project must fit within one of the following twelve eligible categories.

- Pedestrian and bicycle facilities
- Acquisition of scenic easements and historic or scenic sites
- Scenic or historic highway programs including provisions of tourist and welcome center facilities
- Landscaping and other scenic beautification
- Rehabilitation and operation of historic transportation buildings structures or facilities
- Establishment of transportation museums
- Historic preservation
- Archaeological planning and research
- Mitigation of water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat conductivity
- Preservation of abandoned railway corridors
- Control and removal of outdoor advertising
- Provisions of safety and educational activities for pedestrians and bicyclists

These categories are defined further in the CTEP application. A copy of the application can be found on the CTEP website ([www.mdt.state.us/planning/ctep/](http://www.mdt.state.us/planning/ctep/)).

CTEP is a reimbursement program. Currently, federal funds can be used to pay 86.58% of eligible, approved expenditures. Local matching funds account for 13.42% of expenditures.

These Guidelines are written for the recipients of CTEP funds. Throughout this manual the term 'LPA' refers to Local Public Agencies.

### **Local Public Agency Responsibilities**

Recipients of FHWA funds are responsible for the following:

- preparing their projects in a timely and satisfactory manner;
- carrying out their projects substantially as described in the federally approved programming documents;
- ensuring that only eligible activities are undertaken with federal-aid funds;
- maintaining a financial management system that provides accurate information about project expenditures and assures financial accountability and control;
- promoting equal opportunity in the implementation of project activity;
- complying with the National Environmental Policy Act (NEPA);
- complying with all civil rights laws including EEO and labor compliance; and
- complying with applicable federal and state laws, regulations, and standards.

### **Project Steps**

In order to qualify for federal reimbursement of funds, there is a process that needs to be followed. MDT approval is necessary at key junctures along the way. Following is a brief overview of the steps applicable to most projects.

### **Project Development**

- LPAs will solicit and prioritize nominations. Meaningful public participation **is required** at this step.
- LPAs will fill out and send us a CTEP application. The person designated as the Local CTEP Administrator should fill out the application and will be our primary contact from this point forward.
- CTEP will review the application and if all is okay will seek either Transportation Commission or MDT Division Administrator approval.
- CTEP will send out a project approval letter following the Commission's approval. At about the same time, CTEP will develop and send out a Project Specific Agreement for the LPA to review and sign.
- LPAs will return the signed Project Specific Agreement to CTEP.

- CTEP will make a request for initial federal programming. **No** charges can be incurred until the federal programming is in place.

### **Consultant Selection**

- CTEP will send the LPAs a Notice to Proceed with the Consultant Selection Process. The procedures outlined in Chapter 4, '*Consultant and Contracted Services*' are to be followed in consultant selection.
- CTEP will send the LPAs a letter approving the consultant selection. **Do not** proceed until you have received the approval letter.

### **Environmental and Plan Review**

- LPAs will submit preliminary plans and specifications as well as a preliminary environmental document to CTEP for our review. No construction or right of way costs can be incurred until after the environmental document is fully executed and approved. Chapter 3 '*Environmental Analysis*' describes the environmental requirements for CTEP projects.
- CTEP may issue comments on the plans and specifications and environmental documents. Chapter 6 '*Preliminary Engineering*' describes the design and bid document requirements for CTEP projects.
- CTEP will send a letter authorizing LPAs to go to bid once the plans and specifications and environmental documents are approved.
- LPAs will submit the bid review certification form and other requested documentation for our review once bids are received.

### **Construction**

- CTEP will issue a letter authorizing the LPAs to proceed with contracted construction.
- LPAs will conduct a pre-construction conference and follow the reimbursement procedures outlined in Chapter 7, '*Construction Engineering*', '*Construction*' and '*Project Close-out*'.

### **Reimbursement for Eligible Activities**

CTEP is a reimbursement program, not a grant program. If costs are incurred without proper authorization, those costs incurred will be the responsibility of the local public agencies. We recommend new participants not encumber funds or incur costs until they fully understand the requirements and responsibilities they assume in administering and managing a federal-aid program. CTEP provides training during workshops or one-on-one individual meetings.



**Project Management Plan**

MDT requires local public agencies to have the capacity to undertake and satisfactorily complete projects. MDT recommends the preparation of a project management plan that assigns roles and responsibilities to specific individuals for the day-to-day administration and management of the project. Please contact CTEP if you would like more specific information regarding the suggested content of a management plan.

**Conflict of Interest**

Please familiarize yourself and comply fully with code of ethics (2-2-101, 2-2-201 and 7-3-4367 MCA) and conflict of interest (23 CFR 1.33) requirements.

**Commitment of Resources**

LPAs should know where their match money is coming from when you fill out the applications. Projects, which will require private, local, or state resources, as well as federal-aid funds, should have completed all necessary arrangements to ensure availability of those resources. LPAs may also have to consider limitations on the use of those funds; for example Title 23 funds cannot be used as a match for other Title 23 funds.

**Project Specific Agreements**

Project Specific Agreements are the legal documents that govern the administration, development, and maintenance of the project. They must include the following:

- a project budget, by account, detailing funding splits by federal-aid funds, matching funds, and additional contributions;
- the project scope;
- the project location;
- the proposed method of development; and
- the general terms and conditions associated with the program and budget.

Each Project Specific Agreement contains boilerplate provisions regarding contract modification and amendment, method of payment, and compliance with applicable laws and regulations.

MDT prepares draft agreements for review by local or tribal government officials. The drafts will reflect the key elements of the project as described in the original project application. We recommend your attorney review the draft form of the Project Specific Agreements to ensure each is consistent with your legal authority and interests. Any concerns should be communicated to MDT.

Once agreement is reached on the content, we will prepare final drafts for your signature.

A federal-aid program will not be requested from the Federal Highway Administration until the Project Specific Agreements are fully executed.

MDT will consider requests for modifications or revisions of the Project Specific Agreement if requested in advance. Revisions or modifications are required for changes in location, scope of work, or funding increases of greater than 20%. The local or tribal governments must make their request in writing to CTEP. If the proposed change is substantial, then additional public involvement is suggested, and in some cases required.

### **Federal Programming**

The Federal-Aid Project Authorization and Agreement is the document between MDT and the FHWA that defines the project location, work scope, and funding. This document needs to be in place before any costs are incurred on your project, if you are seeking reimbursement.

The funding amounts in this agreement are set at actual contract amounts for preliminary and construction engineering and actual bid amounts for construction. These dollar amounts are then deducted from a local public agencies CTEP fund balance. Formal modifications/revisions are required whenever the project location, work scope, or funding changes. These modifications/revisions need to be requested by the local or tribal governments to the CTEP Engineer overseeing your project. Most commonly, the Federal-Aid Project Authorization and Agreement is modified when change orders or quantity overruns exceed the established funding level.

### **Files**

LPAs must retain complete documentation of CTEP activities. LPAs may be audited some day, so establishing a well-organized file system is very important. We suggest that LPAs keep the following files: Program Administration, Project Application/Project Specific Agreement, General Correspondence, Consultant or Contracted Services, Environmental, Financial Management, Civil Rights, Labor Standards, Right of Way, Design, Construction, Audit, and Closeout.

### **Public Participation**

The FHWA and MDT place an emphasis on citizen participation in the federal-aid program. As an applicant for federal-aid funds, your agency must hold meetings to solicit citizen comments. Federal-aid recipients must:

- provide for and encourage citizen participation;

- provide citizens with reasonable and timely access to local meetings, information, and records relating to the proposed use of funds;
- provide for technical assistance to groups that request such assistance in developing proposals;
- provide for public hearings (following adequate notice, at convenient times and locations to potential beneficiaries, and with accommodation for the handicapped) to obtain citizen views and to respond to proposals and questions at all stages of program development;
- provide for timely written answers to written complaints and grievances; and
- provide for the needs of non-English speaking residents.

Please contact MDT if you have questions or are looking for ideas on how to make the most of the public involvement process.

### **Summary**

Please remember to do the following:

- ensure adequate public participation;
- understand LPAs responsibilities;
- assign one person to be the Local CTEP Administrator and attend training;
- wait for CTEP approvals at key project steps;
- comply with applicable laws and regulations;
- abide by your Project Specific Agreement;
- understand the importance of the federal programming documents;
- have a Project Management Plan in place;
- keep accurate and complete files; and
- ask us for assistance.

## CHAPTER 2

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**Introduction**

This chapter provides guidance on the federal and state requirements that govern fiscal management of federal-aid projects.

Each year, MDT notifies local and tribal governments of the specific funding amounts sub-allocated to them. These sub-allocated funds are considered 'un-obligated funds' until they are obligated to a specific project and approved by MDT.

All projects are assigned a federal-aid project name, project number, and MDT control number. Following approval of the project and execution of the Project Specific Agreement, a Federal-Aid Project Authorization and Agreement from the FHWA is requested. After FHWA has approved the project, funds in the federal-aid program request are officially obligated to that particular project.

Any eligible work occurring prior to FHWA authorization is ineligible for federal-aid participation.

The dollar amounts contained in each account of the federal-aid program represent a 'not-to-exceed' amount. A formal program modification must be made to reimburse any eligible costs that exceed a programmed amount.

**Accounts used include the following:**

<u>Name</u>	<u>Account #</u>
Preliminary Engineering (PE)	9102
Construction (CN)	9502
Construction Engineering (CE)	9402
Right of Way (ROW)	9202
Incidental Construction (IC)	9302
Other (OT)	9702

The project accounting method local public agencies adopt should use this numbering system to create sub-accounts for each project.

**Local Public Agency Responsibilities**

After the Project Specific Agreements and the federal-aid programming are in place, local public agencies **must** comply with the following.

- Funds must be expended in accordance with the provisions of the Project Specific Agreement.

- The Project Specific Agreement must be formally modified when the total project budget is estimated to exceed 20%.
- The project scope, location and account budgets may be amended as long as they do not violate the conditions under which the project was approved and local public agencies have funds available.
- Written approval from MDT must be requested if the dollar amount in any individual budget account is expected to be exceeded.
- Local public agencies must ensure additional funds (federal, state, local or other) are available before authorizing expenditures beyond the amounts specified in the Project Specific Agreement or federal programming documents.
- The MDT must approve revisions to the scope for work and/or project location in writing. Local public agencies must evaluate the effect the proposed changes have on the environmental review to determine if additional action is required.
- A federal-aid program revision must be requested to reflect any change in location, scope of work, or method of construction (i.e. force account).

### **Project Accounts**

The various project accounts are described below.

- **Preliminary Engineering (PE)** – This account is established primarily for preparation of the project plans, specifications, and estimate as well as the environmental review process. This account includes activities up through the time of bid award.

The amount of funding requested from FHWA will normally match the estimate for PE work contained in the consultant contract plus the estimated cost for advertising.

- **Construction (CN)** – The construction account covers all labor, materials and equipment costs associated with the actual construction of the project. This may include procurement of materials for force account work, small contracts, or competitively bid construction contracts.

The environmental document **must** be completed before MDT will authorize local public agencies to begin any construction activities. The federal programming documents will be modified by MDT/FHWA to reflect the actual bid award.

- **Construction Engineering (CE)** – The construction engineering account is established to fund activities that occur **after** local public agencies are notified of MDT concurrence in the award of a construction contract. Eligible CE activities include construction contract administration, construction staking, inspection, and quality assurance testing.

The amount of funding requested from FHWA will normally match the estimate for CE work contained in the consultant contract.

- **Right of Way (ROW)** – The right of way account is only for the procurement of property, easements, and permits. Related expenses such as surveying, appraisals, and transfer and recording fees are to be charged to the PE account.

The environmental document **must** be completed before acquiring right of way. Please refer to Chapter 5, '*Right of Way*' for more information on these activities.

- **Incidental Construction (IC)** – The Incidental Construction account is used to fund construction expenses associated with the relocation of existing utilities. This work is incidental to the construction of the project, not the project itself. The environmental document **must** be completed before performing the physical relocation of the utility.

The IC account pertains to publicly, privately or cooperatively owned utility, lines, systems for producing, transmitting, or distributing communications, power, electricity, light, gas, oil, crude products, water, steam, waste, storm water not connected with roadway drainage, or any similar commodity. The IC account is also used to relocate, adjust, or modify existing railroad facilities required as a result of the enhancements project.

- **Other (OT)** – This account is used for special projects when no actual construction takes place.

### **Cost Reimbursement**

Reimbursement requests should be submitted no more than once a month for each project. Reimbursement can only be requested after expenses have been incurred and the local public agencies certify work as being complete in a letter to MDT. The reimbursement request must:

- detail the total amount of claims for that period;
- indicate the federal-aid reimbursement amount expected;
- include a copy of all supporting claims;
- certify the work has been satisfactorily completed;
- be delivered to the District Representative for construction phase work or mail to CTEP for PE phase work; and
- indicate to whom and where the warrant is to be delivered.

After completion of construction activities, notify the District Representative who will perform a final project review and other closeout activities.

Local public agencies should plan on a turnaround time for receipt of funds of 30 calendar days from the date of receipt by MDT.

### **Property Management & Disposition**

Please contact MDT if real property improved with FHWA funds or equipment purchased with FHWA funds are being considered for sale or disposition. We will then determine if reimbursement to the MDT/FHWA or cost recovery is applicable.

### **Records Retention**

The types of documents, records, and reports illustrated by the following list must be retained in accordance with government guidelines after project closeout.

- documents – receipts, purchase orders, invoice statements, claims, checks, and warrants.
- records – accounting, budgetary, payroll, time, and bank statements.
- reports – financial summary and request for reimbursement, financial reports, payroll, progress reports, and payment certification.
- other – budgetary resolution.

These documents, records and reports are subject to applicable federal, state and local laws relating to public access, privacy, and confidentiality.

### **General Accounting Requirements**

Local public agencies are required to maintain accounting records that adequately identify the source and application of funds provided for FHWA assisted activities. The records must also contain information pertaining to assets and expenditures. Accountability for FHWA funds requires adequate assurance that these funds are used solely for authorized purposes. Questions regarding standards of accountability should be directed to the Montana Department of Commerce.



### Summary

Please remember to do the following:

- Understand your responsibilities regarding the Project Specific Agreement and federal-aid programming.
- Do not change work scope or project location without MDT approval.
- Know what each of the accounts represents.
- Follow the procedures for reimbursement requests.
- Keep and maintain records.

## CHAPTER 3

# ENVIRONMENTAL ANALYSIS

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EXHIBIT LIST\*

- 3-1 Designation of Environmental Certifying Official
- 3-2 Environmental Checklist
- 3-3 Related Information to the Environmental Checklist
- 3-4 Historic Preservation Review Process
- 3-5 Categorical Exclusion Group (c) Action Letter
- 3-6 Categorical Exclusion Group (d) Action Letter
- 3-7 Contact List
- 3-8 Re-Evaluation Of Categorical Exclusion Letter

\*Exhibits can be found at the end of this chapter.

### **Introduction**

All Community Transportation Enhancement Program projects must comply with the National Environmental Policy Act (NEPA). NEPA establishes national policy, goals and procedures for protecting, restoring and enhancing environmental quality. Federal regulations for compliance of NEPA with regards to Federal Highway Administration (FHWA) federal-aid programs, are found generally in 23 Code of Federal Regulations (CFR) 771.772 and 777 and 40 CFR 1500-1508.

The end result of the environmental review process is a completed Environmental Checklist and a Categorical Exclusion Group “c” or Group “d” letter. The CTEP Bureau will inform the LPAs of which group letter will be appropriate to submit. The LPA’s Environmental Certifying Official signs both the Checklist and Letter.

CTEP projects **may not** incur Right of Way expenses, begin incidental construction (utility relocation), advertise for bids, or begin construction on a project until the environmental requirements have been satisfied and approved by MDT and the FHWA. Preliminary Engineering activities, up to the point of advertising for a bid letting, are “exempt” from the environmental review requirements.

If at any time during the period of the project it becomes necessary to substantially revise or amend the project scope of work, it will be necessary to re-assess the environmental document regarding the proposed changes. In these cases the MDT should be contacted for guidance.

### **Historic Preservation Review**

Section 106 of the National Historic Preservation Act [36 CFR 800] requires that federally assisted undertakings (CTEP Projects) take into account the effect of the project on properties included in or eligible for the National Register of Historic Places. The process is described in **Exhibit 3-4**.

The CTEP Bureau initiates the initial consultation with the MDT Historian utilizing information contained in the Project Application. The LPA is furnished a copy of the MDT Historian’s comments. Based on the those comments, the Local Public Agency review for compliance with Section 106 requirements may be very minimal or may need to include preparation of a Cultural Resources Report.

### **Environmental Certifying Official**

All LPAs must designate an Environmental Certifying Official who is responsible for activities associated with the environmental review and preparation of the

environmental document - see **Exhibit 3-1** (available through email). This person should be capable of defending any information provided to the public or MDT as part of the environmental review process. This person must be an employee of the local agency or an elected official of that agency.

### **Environmental Checklist**

The Environmental Certifying Official must present evidence that the project activities meet the environmental requirements. This is achieved through completion of the Environmental Checklist.

The Environmental Checklist, **Exhibit 3-2** (available through email), includes a format and an index of the applicable federal laws and executive orders. **Exhibit 3-3** is related information to the Environmental Checklist to help the Environmental Certifying Officer make decisions as they go through the Checklist.

By completing the checklist, the certifying official considers the effect of the project on a variety of potential environmental concerns. For each compliance factor (Historic Properties, Floodplain Management, Wetlands, etc.) the certifying official must determine whether the factor:

- Is not applicable to the project;
- Requires further consultation;
- Requires additional review;
- Requires a permit;
- Requires permits and such permits have been, or will be, obtained; or
- Requires compliance with conditions and/or the undertaking of mitigation actions.

The certifying official should retain all of the documentation (letters, test results, maps, notes on comments of authorities contacted) that is gathered to support the documentation. Situations that require additional consultation are those in which contacting the appropriate state or federal agency is necessary. The consultation can result in any of the following: no need to further address the requirements; the placement of conditions on the LPA; or, halting the project until mitigating measures are identified and steps taken to achieve compliance.

If permits are required, a listing of the specific permits needed should be attached to the Environmental Checklist. If mitigating actions are required, the certifying official should fully describe the actions the LPA will take to assure compliance.

### **Categorical Exclusions**

Categorical Exclusions are actions that, based on past experience with similar actions, do not involve significant environmental impacts and therefore do not require preparation of either an Environmental Assessment or an Environmental Impact Statement, a Categorical Exclusion Document signifies completion of the Environmental Review.

There are two types of Categorical Exclusion Documents. A Group (c) and a Group (d). These relate to the regulations listed in the Federal Register at 23 CFR 771.117 (c) and 23 CFR 771.117 (d).

### **Categorical Exclusion Group(c) Letter and Document Retention**

To qualify for a Categorical Exclusion Group (c), the environmental certifying official must determine that the project is an action listed under 23 CFR 771.117 (c), and that no project activities are affected by other Federal Statutes or Executive Orders. Most CTEP projects with no significant impacts to the environment use a Group (c) letter.

There is a list of 20 actions in 23 CFR 771.117(c) which meet the criteria for a Group (c) action letter. The two most common actions that apply to CTEP projects are: *Construction of bike and pedestrian lanes, etc* and *Landscaping*.

If all project activities are categorically excluded and other Federal Statutes or Executive Orders affect no project activities, the certifying official must complete the Environmental Checklist, **Exhibit 3-2**, and prepare the Group (c) letter, **Exhibit 3-5**.

The LPA will then submit the completed Environmental Checklist, Group (c) letter and all supporting documentation to the CTEP Bureau for review and concurrence. The CTEP Bureau will review the Environmental Checklist, Group (c) letter, and supporting documentation. If we find the Group (c) letter acceptable, we will sign our concurrence and send copies to everyone on the distribution list, including the LPA.

Each LPA must prepare and maintain a complete record of the environmental review in the Environmental Review File. The Environmental Review File needs to contain the following when a Group (c) letter is used:

- **Exhibit 3-1** Designation of Environmental Certifying Official;
- **Exhibit 3-2** Environmental Checklist;
- **Exhibit 3-5** Categorical Exclusion Group (c) document; and
- Any other accompanying documentation and applicable correspondence including public comments and public notices.

The records contained in the environmental review file must be available for public review in the general offices of the local government.

### **Categorical Exclusion Group (d) Letter and Document retention**

The next alternative for project activities that cannot be “*excluded*” by using a Group (c) letter is the Group (d) letter. This letter is most often required on projects that impact historical properties. A Group (d) letter may also be required when permits are needed to construct the project such as: a 404 Permit from the Army Corps of Engineers to work within the banks of a waterway or disturbing wetlands, a Floodplain Permit to work within the floodplain of a waterway, or permits required on a Reservation.

When other public agencies have jurisdiction by law over an area where a proposed CTEP project is to be located, those entities are considered Cooperating Agencies and the Local Public Agency or consultant must provide them with an opportunity to review and comment on a draft copy of the Group (d) letter. Examples of agencies with jurisdiction by law would be the Department of State Lands or U.S. Forest Service if the project is located on land administered by them. The Environmental Protection Agency has jurisdiction if the project is located within the boundaries of a Superfund site. The Tribes have jurisdiction if the project is located within the boundaries of a reservation. You must resolve all issues raised by Cooperating Agencies and outline the resolution of those issues in the version of the Group (d) letter submitted to the CTEP Bureau for review and concurrence.

If the environmental certifying official determines that a Group (d) letter can be used, please complete the Environmental Checklist, **Exhibit 3-2**, and prepare the Group (d) letter, **Exhibit 3-6**. Again, both of these are available through email.

The Local Public Agency will then submit two originals of the completed Group (d) letter, the Environmental Checklist, and all supporting documentation for CTEP Bureau review and concurrence. If we find the Group (d) letter acceptable, we will sign our concurrence on the two originals and send them to the FHWA for their concurrence and signature. When FHWA concurs, they will keep one original and return the other to the CTEP Bureau. The CTEP Bureau will distribute copies of the signed Group (d) letter to everyone on the distribution list.

Each LPA must prepare and maintain a complete record of the environmental review in the Environmental Review File. The Environmental Review File needs to contain the following when a Group (d) letter is used:

- **Exhibit 3-1** Designation of Environmental Certifying Official;
- **Exhibit 3-2** Environmental Checklist;
- All Permits;

- Information documenting compliance with the Section 106 historic preservation process
- **Exhibit 3-6** Signed copy of the Categorical Exclusion Group (d) document; and
- Any other accompanying documentation and applicable correspondence including public comments and public notices.

The records contained in the environmental review file must be available for public review in the general offices of the local government.

All CTEP projects should be able to satisfy the NEPA process with completion of either a Group (c) or (d) letter. However, if it is determined that there is some continuing impact that may be considered significant, or if there are alternatives, or substantial controversy on environmental grounds, contact the CTEP office for further direction.

### **Re-evaluation of Categorical Exclusions**

If a categorical exclusion is more than 3 years old (for a project that is about to receive CTEP Bureau concurrence to begin the bid letting process), or the scope of work or project limits have changed, the environmental document must be re-evaluated by the LPA or their consultant to see if the document still adequately addresses all environmental impacts. A Re-evaluation letter, **Exhibit 3-8**, must be completed and submitted with all supporting documentation for CTEP Bureau review and concurrence. If the Re-evaluation letter is acceptable, we will sign our concurrence and send copies to everyone on the distribution list, including the LPA.

### **Summary**

It is important to remember the following:

- An Environmental Certifying Official must be designated by the LPA for its project.
- If reimbursement is to be sought, the LPA cannot incur costs, except Preliminary Engineering costs, until the environmental requirements have been satisfied.
- The MDT cannot release funds for construction activities and/or right-of-way acquisition until the environmental requirements have been satisfied.
- “Categorically Excluded” projects need to satisfy federal environmental laws and regulations. Group (c) or (d) letters, must be submitted to and approved by MDT.
- LPAs are urged to address historic preservation review comments at the outset of the project’s development in order to avoid possible time delays.
- The environmental documents will need to be re-visited for projects more than three years old that have not completed construction.



- An Environmental Review File must be maintained by the LPA for its project.

## DESIGNATION OF ENVIRONMENTAL CERTIFYING OFFICIAL

*(Sample - To Be Completed on Local Public Agency Letterhead)*

*(Date)*

Thomas E. Martin, P.E.  
Montana Department of Transportation  
Transportation Planning Division  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

Re: **DESIGNATION OF ENVIRONMENTAL CERTIFYING OFFICIAL**

Ref: Project Number: STPE  
Project Name:  
Control Number:

This is to notify you that \_\_\_\_\_ *(Name)* \_\_\_\_\_, \_\_\_\_\_ *(Title)* \_\_\_\_\_, is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the development of the approved transportation project referenced.

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Typed Name and Title

\* *The chief elected official (mayor or chairperson of county commission) should sign this letter.*

## Environmental Checklist

**Project Name and Project Number:** \_\_\_\_\_

**STPE** \_\_\_\_\_ (       ) \_\_\_\_\_

**CN** \_\_\_\_\_

Area of Statutory-Regulatory Compliance		N/A	Review Required *	Permits Required *	Conditions and/or Mitigation Actions Required *	Note and attach Documentation
(Precise citations for applicable statutes and regulations are printed at the end of this Checklist.)						
1.	Historic Properties (SHPO)					
2.	Floodplain Management (County)					
3.	Wetlands Protection (COE)					
4.	Noise (DEQ)					
5.	Air Quality (DEQ)					
6.	Manmade Hazards					
	Abandoned Underground Storage Tanks					
	Leaking Underground Storage Tanks					
	Possible Hazardous Waste Sites					
	Airport Clear Zones					
7.	Water Quality (DEQ or EPA for reservation projects)					
	Surface Water/Water Quality					
	Groundwater & Aquifers <sup>1</sup>					

8.	Threatened or Endangered Species, Fish & Wildlife (USF&WS)					
9.	Biological Resources-habitat containing sensitive species: either nesting, foraging, or inhabiting (MDFW&P/MSL)					
10.	Is there substantial, local, regional or other controversy on environmental grounds?					
11.	Section 4(f) – would project change use of Park, Recreation Area, Wildlife refuge, waterfowl refuge (23 CFR 771.135)					
12.	Section 6(f) – would project change use of protected properties acquired or developed with Land and Water Conservation Funds. Administered by the Department of Fish, Wildlife and Parks.					
13.	List other agencies contacted.					

\* Attach evidence that required actions have been taken.

1	Including the Missoula Sole Source Aquifer; contact MDT for further information regarding Missoula area projects.
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## CERTIFICATION

I certify that the findings on the proceeding LPA Environmental Checklist accurately reflect the status of compliance with applicable laws and regulations for the proposed transportation project.

\_\_\_\_\_  
Type Name and Title of  
Environmental Certifying Official

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# INDEX OF APPLICABLE FEDERAL STATUTES AND REGULATIONS INCLUDED IN THE ENVIRONMENTAL CHECKLIST AND COMPLIANCE CERTIFICATION

## Historic Properties

- The National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.), particularly sections 106 and 110 (16 USC 470 and 470h-2), except as provided in '58.17 for Section 17 projects.
- Executive Order 11593 - Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Compilation, particularly section 2(c).
- 36 CFR Part 800-Advisory Council on Historic Preservation
- The Reservoir Salvage Act of 1960 as amended by the Archaeological and Historic Preservation Act of 1974 (16 USC 469 et seq.), particularly section 3 (16 USC 469a-1).

## Floodplain Management

- Executive Order 11988, Floodplain Management, May 24 1977 (42 FR 26951, 3 CFR, 1977 Comp., as interpreted in FHWA regulations at 23 CFR 650.101-650.117.
- Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128).
  - National Flood Insurance Program (44 CFR 59-79).

## Wetlands

- Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Compilation, particularly sections 2 and 5; and Applicable State Legislation or Regulations.

## Noise

- Noise Abatement and Control, 24 CFR 51.100 (44 FR 40861, 7/12/79, as amended at 61 FR 13333, 3/26/96).

## Air Quality

- Clean Air Act (42 USC 7401 et seq.) as amended; particularly section 17(c) and (d) (42 USC 7506(c) and (d)).
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency, 40 CFR parts 6, 51, and 93).

## Man-made Hazards

- Sitting of FHWA Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields, 23 CFR 620.101-620.104 (39 FR 35145, 9/30/74)

## Water Supply/Quality

- Federal Water Pollution Control Act, as amended (33 USC 1251-1376).
- The Safe Drinking Water Act of 1974, as amended (42 USC 69-01-6978, 300f-300j-10).
- U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR 100-149.
- Missoula, Montana Sole Source Aquifer, in accordance with Section 1424 (e) of the Safe Drinking Water Act, 42 USC 300h-3 (1982).

## Solid Waste Disposal

- Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901-6987).
- U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR 240-265.

## Farmlands Protection

- Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) particularly sections 1540(b) and 1541 (7 USC 4201(b) and 4202).
- Farmland Protection Policy (U.S. Department of Agriculture 7 CFR 658).

## Wild and Scenic Rivers

- Wild and Scenic Rivers Act of 1968 (16 USC 1271 et. seq.) as amended, particularly section 7(b) and (c), (16 USC 1278 (b) and (c)).

**Note:** *In Montana, this act applies to the North Fork of the Flathead River from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir; and, the Missouri River consisting of the segment from Fort Benton, one hundred and forty-nine miles downstream to the Russell Wildlife Refuge boundary (Fred Robinson Bridge).*

### Endangered Species

- The Endangered Species Act of 1973 (16 USC 1531 et seq.) as amended; particularly section 7 (16 USC 1536).
- Fish and Wildlife Coordination Act (16 USC 661-666c).

### Environmental Justice

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Compilation Page 859 (24 CFR 58.5, April 30, 1996).

## Other Related Environmental Information

Determine if your project will impact a biological resource. This could be a stream, wetland or other habitat containing sensitive species that use it for nesting, foraging or inhabiting. A list may be obtained from the Montana Department of Fish, Wildlife & Parks. The U.S. Fish and Wildlife Service and the Montana Natural Heritage Program at the Montana State Library also have lists of sensitive, threatened or endangered species and their general locations. If you check yes, you must explain the impacts and any appropriate mitigation measures that will be taken in your project's environmental document. Federal law protects threatened and endangered species and their habitat. The U.S. Fish and Wildlife Services, which has a list of the protected species, administers the law. Questions may be directed to the U.S. Fish and Wildlife Service. All above ground electric lines less than 69,000 watts, with a spacing of less than 60 inches between conductors, are required to be raptor-proofed as specified by the Department of Fish, Wildlife and Parks.

Determine if the proposed project involves wetlands. For a definition of wetlands, contact the U.S. Army Corp of Engineers. Reasonable efforts must be made to avoid impacting wetlands in compliance with Executive Order 11990, which states that Federally funded projects must "avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands . . . where there is a practicable alternative". You may be required to mitigate wetland impacts.

Determine whether a proposed project is located in or will affect a floodplain area. Projects within delineated floodplains must be designed in accordance with Executive Order 11988 (23 CFR 650.101-650.117); a copy is available from the State Law Library. The county under federal flood insurance provisions does delineation of floodplains. For a map of the floodplains and a copy of the regulations, contact the appropriate County Office.

Special attention should be paid to requirements related to floodplains. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management Section  
Montana Dept of Natural Resources and Conservation  
48 N. Last Chance Gulch  
P.O. Box 201601  
Helena, MT 59620-1601  
Phone Number: 444-6654



Determine if your project will impact Section 4(f) properties. Section 4 (f) properties are publicly owned land that is a park, recreation area or wildlife or waterfowl refuge. If the proposed project would change the existing use of a 4(f) property, an alternative analysis must be completed (detail is found in 23 CFR 771.135).

Determine if your project will impact Section 6(f) properties. Section 6(f) properties are protected properties, for public outdoor recreation, acquired or developed with Land and Water Conservation Funds (LWCF). The Department of Fish, Wildlife and Parks administer this program.

Determine if your project will impact Section 106 properties. Section 106 properties are cultural resources (historic and archeological). Coordination between the MDT, FHWA, the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) will be required for the development of a project that affects these properties. Properties on or eligible for the National Register will require the preparation of a Determination of Effect report.

The federal authority for obligations related to floodplains and wetlands appears in Executive Orders 11988 and 11990, respectively. For the assistance of the LPA, the publication Further Advice on Executive Order 11988 Floodplain Management is available from MDT.

If the site is on or near an abandoned service station, mine tailings, municipal dumps, etc., the potential for hazardous waste sites needs to be considered. In case of doubt, contact the Remediation Division at the Montana Department of Environmental Quality. (See Contact List, **Exhibit 3-7**)

The National and Montana Pollutant Discharge Elimination System (NPDES/MPDES) Section 402-Clean Water Act requires a submittal to the Montana Department of Environmental Quality (MDEQ) of a Notice of Intent (NOI) package for a storm water discharge associated with construction activity. This comes under the **General Permit** for Storm Water Discharges Associated with Construction Activity from the MDEQ. It applies during construction activities where one (1) or more acres of ground are disturbed. (Surface waters include rivers, streams, tributaries, impoundments and irrigation ditches.) NOI packages are obtained from the Permitting and Compliance Division at the Montana Department of Environmental Quality or the Environmental Protection Agency for projects within reservation boundaries. The basic principle of the General Permit is to identify areas or activities during construction that may contribute pollutants to surface waters and to consider practical methods to reduce pollutants from the construction operation. The major pollutant that could be a potential problem for a CTEP project will be sediment discharges from increased erosion brought on by storm event. If the project will impact a water body, you must ensure that minimal sediment reaches surface waters by using appropriate erosion and sediment control measures called Best Management Practices (BMP's).

If there is substantial, local, regional or other controversy, which is based on environmental grounds, the controversy must be addressed. Explain the nature of the controversy and the necessary steps to resolve each issue.

Call-out identified inconsistencies with any federal, state or local law relating to the environmental aspects of the action. Conflicts must be addressed, so LPAs should consider carefully all environmental requirements and ramifications.

Permits required for the project must be identified in the file; further the party responsible for obtaining the permit must be identified.

Permits that may be necessary and where to find them:

- Montana Stream Protection Act (124 Permit)– Department of Fish, Wildlife and Parks.
- Montana Floodplain and Floodway Management Act (Floodplain Development Permit)- local floodplain coordinator.
- Short-term Exemption from Montana's Surface Water Quality Standard (3A Authorization) – Department of Environmental Quality, Water Protection Bureau.
- Montana Land Use License or Easement on Navigable Waters – Department of Natural Resources and Conservation, Trust Lands Management Division.
- Montana Water Use Act (Water Right Permit) – Department of Natural Resources and Conservation, Water Rights Bureau.
- Federal Clean Water Act (404 Permit-dredged or fill material into waters of the United States) – U.S. Army corps of Engineers.
- Federal Clean Water Act (402 Permit-NPDES/MPDES storm water runoff) – Department of Environmental Quality on non-tribal lands – Environmental Protection Agency on tribal lands
- Federal Rivers and Harbors Act (dredged or fill material into navigable waters of the United States) – U.S. Army Corp of Engineers

A Contact List, **Exhibit 3-7**, is provided at the end of this chapter containing the names, addresses and phone numbers of agencies referred to in the Environmental Checklist. A useful publication for determining what permits may be needed during construction is A Guide to Highway Construction Permitting in Montana, available from MDT's Construction Bureau.

# HISTORIC PRESERVATION REVIEW PROCESS

## KEY DEFINITIONS USED IN THE SECTION 106 PROCESS

Key definitions related to historic preservation requirements and the Section 106 process are listed below:

**Area of Potential Effects:** the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

**Historic Property:** any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

**National Register:** the National Register of Historic Places maintained by the Secretary of the Interior.

**National Register Criteria:** the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register.

**State Historic Preservation Officer (SHPO):** the official appointed or designated to administer the State Historic Preservation Program.

**Undertaking:** any project, activity, or program that can result in changes in the character or use of historic properties, if any such properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. "Undertakings" include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

## THE MDT SECTION 106 PROCESS

The following procedures outline the Section 106 process that Community Transportation Enhancement Program (CTEP) fund recipients must follow. All of the following steps apply equally to archaeological sites as well as to historic properties.

### **First: Determine if the Project is an "Undertaking" Under Section 106**

It is the responsibility of the MDT and the Local Public Agency (LPA), in consultation with SHPO, to determine whether or not a proposed project activity constitutes an "undertaking" according to the definition noted above. For instance, in some cases, such as an historic preservation project involving federal-aid financial assistance to a LPA that will result in no physical change or disturbance, the project would not constitute an "undertaking." In this case, along with the documentation noted below, the Section 106 process would be completed. The MDT should be consulted prior to making the determination.

SHPO can be contacted at the following address should you have additional questions:

State Historic Preservation Office  
225 North Roberts  
P.O. Box 201202  
Helena, MT 59620-1202  
Telephone: 444-7715

**Required Documentation** - The following documentation would only be required in the case of a determination that a project did not constitute an "undertaking" under Section 106. A letter to the MDT signed by the Environmental Certifying Official stating the determination and written concurrence from the State Historic Preservation Office.

### **Second: Establish Area of Potential Effects**

Assuming a proposed project does constitute an "undertaking," the LPA must consider and propose the undertaking's "area of potential effects" according to the definition noted above. The "area of potential effects" should be delineated on maps in a preliminary fashion according to the best judgement of the LPA. Later, at the next level, it may be necessary to adjust the "area of potential effects" after consulting with MDT (MDT will consult with SHPO as necessary).

### **Third: Identify Historic Properties or Archaeological Sites within the Area of Potential Effects**

Assuming that an undertaking and area of potential effects has been established, the LPA must review any existing information on historic properties or archaeological sites potentially affected by the undertaking, including any information concerning the likelihood that unidentified historic properties or archaeological sites may exist in the area of potential effects. A copy of the initial records search performed by MDT will be provided to the LPA by the MDT along with the authorization to begin preliminary engineering activities.

The MDT Historian formally requests the view of the Montana SHPO regarding further actions to identify historic properties that may be affected on a case by case basis.

It is the responsibility of the LPA to seek additional information locally on potential historic properties or archeological sites and potential effects of the project by contacting local organizations and individuals with knowledge of historic properties, including any local historical societies and Indian tribes.

By contacting SHPO, local individuals, and organizations or groups familiar with local historic properties or archaeological sites, the MDT and LPA will be able to determine whether there is a need for further actions, such as field surveys.

### **Fourth: Locate Any Historic Properties**

The LPA, in consultation with MDT, must make reasonable efforts to identify any historic properties or archaeological sites that may be affected by the undertaking and gather sufficient information to assist SHPO in evaluating the eligibility of these properties for the National Register [36 CFR 800.4 (b)].

#### **Fifth: Evaluating Historical Significance**

The LPA must help MDT and SHPO determine the National Register eligibility of historic properties that may be affected by the undertaking and that have not been previously evaluated for eligibility. If the LPA does not agree with MDT and SHPO as to the eligibility of particular historic properties or archaeological sites for the National Register, the LPA has the right to request a determination of eligibility from the Keeper of the National Register [36 CFR 800].

#### **Sixth: When No Historic Properties are Found**

In the event that MDT and the LPA agree that no historic properties or archaeological sites exist that may be affected by the undertaking, MDT may request a written determination of concurrence with this finding from SHPO. In such cases, SHPO shall issue a finding that the proposed activity does not pose a threat to significant cultural resources and that no further cultural resource review appears warranted for the proposed undertaking. The LPA should notify interested persons and organizations of this determination and make the documentation leading to the decision available to the public. In these circumstances, the LPA is not required to take further steps in the Section 106 process [36 CFR 800.4 (d)].

#### **Seventh: Assess Effects**

LPAs will progress to this stage if historic properties or archaeological sites exist that have been identified according to the preceding process and that may be affected by the undertaking. Where such properties or sites exist, it is necessary for the LPA to assess the effect of the project on these properties, in coordination with MDT and SHPO, and make one of the following three determinations of effect:

- **Option #1: Finding of No Effect;**
- **Option #2: An Effect is Found, but Effect is Not Adverse; or**
- **Option #3: An Effect is Found and Effect is Adverse.**

Under Section 106, the criteria for determining an "effect" and "adverse effect" are as follows [36 CFR 800.9]:

Criteria of Effect: An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect: An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include outright physical destruction, damage, or alteration of all or part of the property, change in character or setting, or addition of inappropriate elements such as noise.

### **Option #1 - Finding of No Effect**

In consultation with MDT, the LPA may make a finding of "no effect." When the LPA finds the undertaking will have no effect on historic properties or archaeological sites, the LPA shall notify MDT by letter as well as any interested local historic preservation organization or individuals.

Required Documentation - A letter to MDT, signed by the Environmental Certifying Official, stating the finding of "no effect" is required, along with the following materials:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;
2. A description of the efforts used to identify historic properties or archaeological sites;
3. A statement of how and why the finding of "no effect" was found applicable; and
4. The views of affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

MDT will provide this information to SHPO and unless SHPO objects within 15 days of receiving such notice, the LPA is not required to take any further steps in the Section 106 process.

### **Option #2 - An Effect is found but Effect is Not Adverse**

When a LPA finds, in consultation with MDT, that the project or "undertaking" would have an effect on a historic property or archaeological site according to the "criteria of effect" noted above, the LPA must next decide if that effect is **adverse** or **not adverse**. This is done by the LPA applying the "criteria of adverse effect" noted above. If the LPA finds the effect is "not adverse," the LPA must obtain MDT concurrence with this determination. MDT, when required, will notify and submit to SHPO summary information documenting the reasons for the finding.

If there is no objection from SHPO to the finding of "no adverse effect" within 30 days of receipt of the notice, or if SHPO objects but proposes changes that the LPA accepts, the Section 106 process is ended at this point. If SHPO objects to the finding or the LPA does not agree with the changes proposed by SHPO, the effect shall be considered adverse.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the LPA's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;
2. A description of the historic properties that may be affected by the undertaking;
3. A description of the efforts used to identify historic properties or archaeological sites;
4. A statement of how and why the criteria of "adverse effect" were found inapplicable; and
5. The views of SHPO, affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

### **Option #3 - An Effect is found and Effect is Adverse**

LPAs are strongly discouraged from pursuing the development of projects that would cause an adverse effect. Projects determined to have an adverse affect will require that the LPA to implement and complete a full Section 4(f) process. If you decide to pursue this approach contact the MDT Historian, Jon Axline at (406) 444-6258 or MDT Archeologist, Steve Platt at (406) 444-0455 to discuss requirements and procedures.

If it is determined by the MDT or SHPO that the proposed project would cause an adverse effect to a historic property, then consultation between the LPA, MDT Cultural Resources staff and the SHPO must be undertaken to reduce the impacts to the property in order to obtain a no adverse effect determination. The Advisory Council on Historic Preservation may participate in the consultation process. Interested individuals or public or private organizations should be informed through normal local public involvement procedures. The LPA can meet with interested members of the public or conduct a public information meeting for this purpose.

If the LPA and SHPO agree upon how the effects will be taken into account, they will execute a Memorandum of Agreement. The Council may choose to participate in this agreement. The SHPO should be consulted further as to developing the particular language of the Memorandum.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the LPA's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;

2. A description of the efforts used to identify historic properties or archaeological sites;
3. A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate;
4. A description of the undertaking's affects on historic properties;
5. A description and evaluation of any alternative or mitigation measures proposed;
6. A description of any alternative or mitigation measures that were considered but not chosen and the reasons for their rejection; and
7. A description of the LPA's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons.

#### HOW TO NOTIFY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The address for the Advisory Council on Historic Preservation is:

Advisory Council on Historic Preservation  
Suite 401  
730 Simms Street  
Golden, CO 80401

#### PROGRAMMATIC AGREEMENTS

In the case of complicated projects where numerous, repeated historic reviews would have to be initiated, SHPO recommends that LPAs execute a "programmatic agreement" with SHPO and the Advisory Council setting forth how the process of identification of possible historic properties and determination of effect will be administered for all individual project activities. Execution of a programmatic agreement can be of benefit in expediting review of numerous properties. For example, a programmatic agreement may be desirable for a LPA administering a rehabilitation project that may involve individual historic reviews for dozens of structures proposed for rehabilitation. LPAs who believe that this type of arrangement may assist in the completion of their projects should contact the SHPO for further guidance.



(Sample - To Be Completed on Local Public Agency Letterhead)

(Date)

Thomas E. Martin, P.E.  
Montana Department of Transportation, CTEP Bureau  
Transportation Planning Division  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

Subject: Categorical Exclusion Group (c) Action Letter  
Federal-aid Project Number: STPE  
Federal-aid Project Name:  
MDT Control Number:

Insert name of LPA and location has determined that this proposed project study will not involve unusual circumstances as described under 23 CFR 771.117(b). It therefore qualifies as a Categorical Exclusion under the provisions of 23 CFR 771.117(c), part (select the appropriate part(s) 1-20, see List of CE(c) Activities page 3-13,14). This proposed action also qualifies as a Categorical Exclusion under the provisions of ARM 18.2.261 (Sections 75-1-103 and 75-1-201, MCA).

In accordance with the Federal Highway Administration's (FHWA) letter of March 29, 1999 to MDT's Environmental Services, please notify FHWA that the proposed action is being processed in accordance with 23 CFR 771.117(c).

\_\_\_\_\_  
Signature of Environmental Certifying Official  
or Chief Elected Official

\_\_\_\_\_  
Type Name and Title

Concur \_\_\_\_\_  
Thomas E. Martin, P.E.  
CTEP Bureau Chief  
Community Transportation  
Enhancement Program (CTEP)

\_\_\_\_\_  
Date

cc: (name), P.E.(if applicable), MDT, District Administrator – (name of MDT District)  
Carl S. Peil, P.E., MDT, Preconstruction Engineer  
Dave Hill, MDT, Manager - Environmental Services  
David W. Jensen, Supervisor – Fiscal Programming Section  
FHWA - Helena  
Name of LPA  
Name of Consultant (if applicable)  
Other public agencies with jurisdiction by law (DSL, BLM, USFS, Tribes, etc. (if applicable))

(Sample - To Be Completed on Local Public Agency Letterhead)

(Date)

Janice W. Brown, Division Administrator  
Federal Highway Administration (FHWA)  
2880 Skyway Drive  
Helena, MT 59602

Subject: Categorical Exclusion Group (d) Action Letter

Federal-aid Project Number: STPE

Federal-aid Project Name:

MDT Control Number:

This is a request for the FHWA's concurrence that this proposed project meets the criteria for classification as a Categorical Exclusion under the provisions of 23 CFR 771.117(d). This proposed action also qualifies as a Categorical Exclusion under the provisions of ARM 18.2.261 (Sections **75-1-103** and **75-1-201 MCA**). A project location map is attached.

This proposed project is (describe action: bike/ped. path, sidewalk, etc.).

The location of this proposed project is (describe route and highway numbers, beginning and ending mileposts, intersecting routes, length, nearest communities, County, Section, Township, and Range).

The intent of this proposed project is (discuss purpose and need/reason for proposed action, existing conditions, safety concerns, compliance with ADA, etc.).

This proposed project has been evaluated for, and does not have any adverse effect on the following environmental areas of concern: (place an x in the blank for those areas where there will be no effects from the project, if there will be a minor effect from the project leave the blank open and discuss further following this section)

- |  |  |
|--|--|
| <input type="checkbox"/> Stormwater Runoff               | <input type="checkbox"/> Noise                         |
| <input type="checkbox"/> Prime & Unique Farmlands        | <input type="checkbox"/> Section 404 - Clean Water Act |
| <input type="checkbox"/> Floodplains(E.O. 11988/FEMA)    | <input type="checkbox"/> Social/Economic               |
| <input type="checkbox"/> Hazardous Waste                 | <input type="checkbox"/> Stream Preserv./Water Quality |
| <input type="checkbox"/> Historical/Cultural Resources   | <input type="checkbox"/> Threatened/Endangered Species |
| <input type="checkbox"/> Changes in Land Use             | <input type="checkbox"/> Wetlands(E.O. 11990)          |
| <input type="checkbox"/> USDOT - 4(f)/NL&WCF - 6(f) Acts |  |

The proposed project will have a minor effect on the following environmental area(s):

(Use or delete the following sections and describe project impacts in them as necessary)

*(use or delete)* Historic/Cultural Resources - The *(what)* *(was listed/is eligible)* *in/for* the National Register of Historic Places (NRHP) in *(month)*, *(year)*. A Section 106 Determination of Effect has resulted in a finding of "No Adverse Effect," which has been reviewed and concurred with by the State Historic Preservation Office (SHPO) on *(month)* *(day)*, *(year)*. A copy of their concurrence letter is attached

*(use or delete)* Threatened/Endangered Species - The U.S. Department of the Interior's Fish & Wildlife Service (USF&WS) was contacted on *(date)* for identifying Federally listed Threatened/Endangered Species. The following Threatened/Endangered Species were identified by the USF&WS as being in the vicinity of this proposed project and a Biological Resources Report was prepared by *(name)*.

*(use or delete)* The *(name of fish)* is an endangered fish species on the *(name)* River.

*(use appropriate species if applicable)* The bald eagle (*Haliaeetus leucocephalus*) is a threatened raptor species and the peregrine falcon (*Falco peregrinus*) is an endangered raptor species in Montana. The piping plover (*Chardrius melodus*) is listed as a threatened shore bird species in Montana. The interior least tern (*Sterna antillarum athalassos*) waterbird, and the whooping crane (*Grus americana*) are both listed in Montana as endangered species.

*(use appropriate species if applicable)* The gray wolf (*Canis lupus*) and black-footed ferret (*Mustela nigripes*) are endangered predator species, while the grizzly bear (*Ursus arctos horribilis*) is a threatened predator species in Montana.

*(use or delete)* The conclusion of the Biological Resources Report is that *(there are no biological concerns on this project/the project is "Not Likely to Adversely Effect" Threatened/Endangered Species.*

*(use or delete)* Permits Required - The following permits will be acquired prior to any relevant disturbance: (see also the FEMA Floodplain Development Permit, following):

This proposed project will be in compliance with the provisions for both Water Quality under **75-5-401(2) MCA** for Section 3(a) authorizations, and Stream Protection under **87-5-501** through **509 MCA**, inclusive.

A **124SPA Stream Protection Permit** *(was approved/will be required)* by the MDFW&P on *(date)*. *(Required when any project action will affect the bed or banks of any stream in Montana.)*

*(for projects on Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 feet of a surface water body)* A Notice of Intent (NOI) for Storm Water Discharges under the National Pollutant Discharge Elimination System (NPDES) General Permit (**PL 92-500**) will be required with the U.S. Environmental Protection Agency for the control of water pollution for both specific and non-point sources.

*(use or delete)* This proposed project will require the following permit(s) under the Clean Water Act (**33 USC 1251 - 1376**):

*(For projects outside Indian Reservations with more than 5 acres disturbed or 1*

*(acre disturbed within 100 feet of a surface water body)* A Section 402/Montana Pollutant Discharge Elimination System permit from the Montana Dept. of Environmental Quality's Permitting and Compliance Division

*(For projects which will place fill into waters of the United States (includes lakes and wetlands, and below ordinary high water mark of rivers and streams))* A Section 404 permit from the U.S. Army - Corps of Engineers. The COE will be notified that this proposed project qualifies for a "Nationwide" 404 permit under the provisions of **33 CFR 330**.

*(use or delete)* All work will also be in accordance with the *Water Quality Act of 1987 (PL 100-4)*, as amended.

*(use or delete, for projects on Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 feet of a surface water body)* An Erosion Control Plan will be prepared for this proposed project. Best Management Practices will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

*(use or delete, for projects outside Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 feet of a surface water body)* An Erosion Control Plan will be submitted to the Montana Department of Environmental Quality's Permitting and Compliance Division in compliance with their Montana Pollutant Discharge Elimination System Regulations (ARM 16.20.1314) for this proposed project. Best Management Practices will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

*(use or delete)* In accordance with **7-22-2152**, and **60-2-208 MCA**, *(local public agency name)* will re-establish a permanent desirable vegetation community along all areas disturbed by the proposed construction. A set of revegetation guidelines *(will be/were)* developed by *(consultant name)* that must be followed by the contractor. These specifications *(will)* include instructions on seeding methods, seeding dates, types and amounts of mulch and fertilizer, along with seed mix components. Seed mixes include a variety of species to assure that areas disturbed by construction are immediately stabilized by vegetative cover. The Seeding Special Provisions developed for this proposed project *(will be/have been)* forwarded to the responsible County Weed Board for approval.

*(include if any part of a project is within a delineated 100-year floodplain)* Floodplains - A floodplain delineated under Federal Emergency Management Administration (FEMA) criteria along the *(name of watercourse)* is encroached by this proposed project. *(name)* County administers this floodplain for FEMA, and a Floodplain Development Permit will be required for this encroachment.

The floodplain encroachments from this proposed project occur *(location of encroachment)*. This proposed project will not promote or encourage development within this delineated floodplain, nor increase flood liability hazards from its construction. This proposed project is therefore considered to be in compliance with E.O. #11988.

*(use or delete, need one Air Quality par.)* Air Quality - This proposed project is located in an "unclassifiable"/ attainment area of Montana for air quality under 40 CFR 81.327, as amended. As such, this proposed project is not covered under the U.S. Environmental Protection Agency's **Final Rule** of September 15, 1997 on Air Quality conformity. Therefore, this proposed project complies with Section 176(c) of the *Clean Air Act* as amended (**42 USC 7521(a)**).

*(use or delete, need one Air Quality par.)* Air Quality - This proposed project is located in a (CO/PM10) "nonattainment" area of Montana for air quality under 40 CFR 81.327, as amended. However, this type of proposed project is listed in the U.S. Environmental Protection Agency's Final Rule of September 15, 1997 on Air Quality conformity as being exempt from the requirement of a conformity determination. Therefore, this proposed project complies with Section 176(c) of the *Clean Air Act* as amended (**42 USC 7521(a)**).

*(use or delete, use for 4(f) if work involves historic site)* USDOT-4(f) - It has been determined that 4(f) does not apply to restoration, rehabilitation or maintenance of historic facilities when there is a "No Adverse Effect" determination, and when SHPO and the advisory council have been consulted and have not objected to this finding.

*(use or delete, use for 4(f) if in park)* USDOT-4(f) - While this project involves a Section 4(f) resource, the local agency with specific jurisdiction over the resource has petitioned the department for funding to finance the development of the proposed improvement. This petition is accepted as written approval from the official having jurisdiction and taken as evidence that this locally proposed project is consistent with the designated use of the property, and that all possible planning to minimize harm has been/will be accomplished in the location and design process.

There is no "use" of a Section 4(f) resource as protected land is not permanently incorporated into a State/Federal transportation facility. There is also no "constructive use" of protected lands. (Constructive use occurs when a transportation facility not on protected land substantially impairs the activities, features, or attributes that qualify a resource for protection under Section 4(f)).

*(use or delete, use this for 6(f) if one of the 4(f) parts was used above and no LWCF funds were used in constructing the existing facility)* NL&WCF - 6(f) - There is no Conversion of Use involvement as protected property acquired or developed with Land and Water Conservation Funds (LWCF) are not within the project limits. (The LWCF program requires that property purchased or developed with LWCF assistance shall be retained and used for public outdoor recreation. Should a conversion of use exist, the converted property must be replaced at the sponsor's expense with property of equal value and outdoor recreation usefulness.)

Americans with Disabilities Act - (describe what) will be installed in compliance with the Americans with Disabilities Act (**PL 101-336**).

*(use or delete)* Approximately      hectares      (acres) of new Right-of-way/construction permits will be needed for this proposed project. There will be (no) utility involvement.

Public Involvement - (describe the opportunities the public was provided for involvement in selecting this CTEP project)

Cumulative Impacts – (Name of agency (LPA, MDT, etc.) with proposed or active projects in proposed projects vicinity) currently has (No. of, if any) active and (No. of, if any) proposed projects in the vicinity of this proposed project. (Identify the nearest projects, including project number if applicable, what type, and distance/direction from proposed project; then describe what, if any, cumulative impacts may result, or if there are none due to remoteness in time - more than three years between "Ready" dates - and/or distance - more than 1+ km from proposed project.)

*(The following applies if above paragraph clearly shows no significant cumulative environmental impacts will occur)* Therefore, none of the above projects, in conjunction with the proposed project, will have any significant cumulative environmental impacts. (Also clearly state if the Cooperating Agencies (tribes, EPA, or other agencies with jurisdiction by law), when they occur, identified any ongoing or proposed actions that would be affected by, or have impacts on this proposed project.)

This project will not induce significant land use changes or promote unplanned growth. There will be no significant affects on access to adjacent properties or present traffic patterns. This project will not create disproportionately high and adverse human health or environmental effects on minority and low-income populations (**E.O. 12898**) and complies with Title VI of the *Civil Rights Act of 1964 (42 USC 2000d)*. In accordance with 23 CFR 771.117(a), this action will neither individually nor cumulatively, have any significant environmental impacts. Therefore, we are requesting FHWA's concurrence that this proposed project is properly classified as Categorical Exclusion.

\_\_\_\_\_  
Signature of Environmental Certifying Official  
or Chief Elected Official

\_\_\_\_\_  
Type Name and Title

Concur \_\_\_\_\_  
Thomas E. Martin, P.E.  
CTEP Bureau Chief  
Community Transportation  
Enhancement Program (CTEP)

\_\_\_\_\_  
Date

Concur \_\_\_\_\_  
Federal Highway Administration

\_\_\_\_\_  
Date

“ALTERNATIVE ACCESSIBLE FORMATS OF THIS  
DOCUMENT WILL BE PROVIDED ON REQUEST”

Janice W. Brown

Page 6

(Date)

Attachment: Project Location Map

cc: (name), P.E.(if applicable), MDT, District Administrator – (name of MDT District)

Carl S. Peil, P.E., MDT, Preconstruction Engineer

David Hill, MDT, Manager - Environmental Services

David W. Jensen, MDT, Supervisor – Fiscal Programming Section

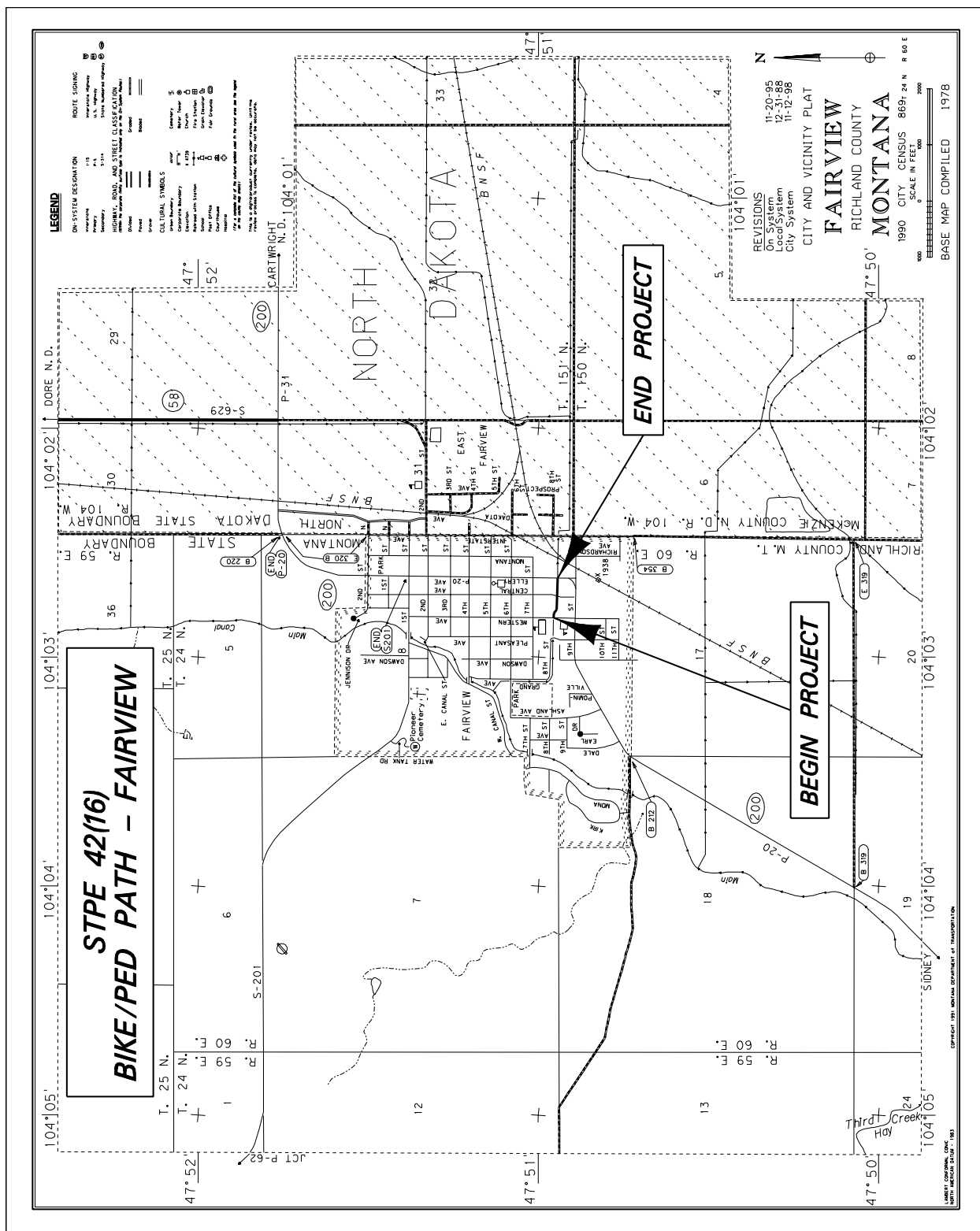
Thomas E. Martin, P.E., MDT, CTEP Engineer

Environmental Quality Council

Name of Consultant (if applicable)

Other public agencies with jurisdiction by law (DSL, BLM, USFS, Tribes, etc. (if applicable))

## Exhibit 3-6





# CONTACT LIST

<b>Missoula District Administrator</b> Montana Department of Transportation Box 7039 Missoula, MT 59807-7039	<b>Loran Frazier, P.E.</b>	<b>523-5800</b>
<b>Butte District Administrator</b> Montana Department of Transportation P.O. Box 3068 Butte, MT 59702-3068	<b>Jeff Ebert, P.E.</b>	<b>494-9600</b>
<b>Great Falls District Administrator</b> Montana Department of Transportation 104 - 18th Ave. NE P.O. Box 1359 Great Falls, MT 59403-1359	<b>Michael Johnson</b>	<b>454-5887</b>
<b>Glendive District Administrator</b> Montana Department of Transportation 503 North River Avenue P.O. Box 890 Glendive, MT 59330-0890	<b>Bill McChesney</b>	<b>377-5642</b>
<b>Billings District Administrator</b> Montana Department of Transportation 424 Morey P.O. Box 20437 Billings, MT 59104-0437	<b>Bruce Barrett</b>	<b>657-0210</b>
<b>MT Department of Environmental Quality Water Protection Bureau</b> 1520 East Sixth Avenue P.O. Box 200901 Metcalf Building Helena, MT 59620-0901	<b>Tom Ellerhoff</b>	<b>444-3080</b>
<b>MT Department of Environmental Quality Remediation Division Hazardous Waste Site Cleanup Bureau</b> 2209 Phoenix Avenue P.O. Box 200901 Phoenix Building Helena, MT 59620-0901	<b>Mike Trombetta</b>	<b>444-5977</b>
<b>MT Department of Fish, Wildlife &amp; Parks</b> 1420 East Sixth Avenue P.O. Box 200701 Helena, MT 59620-0701	<b>Fisheries Division Wildlife Division</b>	<b>444-2449 444-2612</b>

<b>Montana Natural Resource Information System</b>		<b>444-5354</b>
<b>Montana State Library</b> (Provide Township, Range and Section of the project's location)		
1515 East Sixth Avenue		
P.O. Box 201800		
Helena, MT 59620-1800		
<b>State Historic Preservation Office</b>		<b>444-7715</b>
<b>Montana State Historical Society</b>		
225 North Roberts		
P.O. Box 201202		
Helena, MT 59620-1202		
<b>MT Department of Natural Resources and Conservation</b>		<b>444-2074</b>
1625 11 <sup>th</sup> Avenue		
P.O. Box 201601		
Helena, MT 59620-1601		
<b>MT Department of Natural Resources and Conservation</b>		<b>444-2074</b>
<b>Trust Land Management Division</b>		
1625 Eleventh Avenue		
P.O. Box 201601		
Helena, MT 59620-1601		
<b>MT Department of Natural Resources and Conservation</b>		<b>444-6610</b>
<b>Water Right Bureau</b>		
1625 11th Avenue		
P.O. Box 201601		
Helena, MT 59620-1601		
<b>MT Department of Commerce</b>	<b>Department Information</b>	<b>444-3494</b>
<b>Building Codes Division</b>	<b>Building Permits</b>	<b>444-4239</b>
1218 East Sixth Avenue	<b>Plumbing/Mechanical Permits</b>	<b>444-3981</b>
P.O. Box 200517	<b>Electrical Permits</b>	<b>444-4243</b>
Helena, MT 59620-0517		
<b>U.S. Army Corps of Engineers</b>	<b>Allan Steinle</b>	<b>441-1375</b>
Federal Building		
301 South Park, Drawer 10014		
Helena, MT 59626		
<b>U.S. Fish and Wildlife Service</b>	<b>Rob Hazelwood</b>	<b>449-5225</b>
100 North Park, Suite 320		
Helena, MT 59601		
<b>U.S. Environmental Protection Agency</b>		<b>441-1123</b>
Federal Building		
301 South Park, Drawer 10096		
Helena, MT 59626		

(Sample - To Be Completed on Local Public Agency Letterhead)

(Date)

Dale Paulson, Program Development Engineer  
Federal Highway Administration (FHWA)  
2880 Skyway Drive  
Helena, MT 59602

Subject: Re-evaluation of Categorical Exclusion Letter  
Federal-aid Project Number: STPE  
Federal-aid Project Name:  
MDT Control Number:

The (Insert name of LPA) has reviewed the proposed project's impacts and has determined that this proposed project still qualifies as a Categorical Exclusion under the provisions of 23 CFR 771.129 (c or d, whichever is appropriate). A copy of the original Categorical Exclusion is attached. This proposed action also continues to qualify as a Categorical Exclusion under the provisions of ARM 18.2.261 (Sections 75-1-103 and 75-1-201, M.C.A.). This determination is based on the following:

The Scope-of-Work for the proposed project has been reviewed and has/has not changed. (use or delete) The changes involve (describe changes). As a result of these changes, we have re-evaluated the project for environmental impacts (biological resources/cultural resources/ hazardous waste/etc.) and found that in accordance with 23 CFR 771.117(a), this action will neither individually or cumulatively, have any significant environmental impacts.

(use if original document is a CE(c) or delete) This notification documents that this proposed action is still properly classified as a Categorical Exclusion under the provisions of 23 CFR 771.117(c), part (select the appropriate part(s) 1-20, see List of CE(c) Activities page 3-13).

(use if original document is a CE(d) or delete) In accordance with the Federal Highway Administration's (FHWA) concurrence of (insert date FHWA concurred), this notification documents that this proposed action is still properly classified as a Categorical Exclusion under the provisions of 23 CFR 771.117(d).

\_\_\_\_\_  
Signature of Environmental Certifying Official  
or Chief Elected Official

Dale Paulson  
Page 2  
(Date)

Concur \_\_\_\_\_

Thomas E. Martin, P.E.  
Community Transportation  
Enhancement Program (CTEP)

"ALTERNATIVE ACCESSIBLE FORMATS OF THIS DOCUMENT WILL BE PROVIDED ON REQUEST."
---

Attachment: Original Categorical Exclusion

Copy: *(name)*, P.E. *(if appropriate)* - District Administrator – *(name of MDT district)*

Carl S. Peil, P.E. - Preconstruction Engineer

David Hill, Manager - Environmental Services

David W. Jensen, Supervisor - Fiscal Programming Section

Name of LPA

Name of Consultant *(if applicable)*

Other public agencies with jurisdiction by law *(DSL, BLM, USFS, Tribes, etc. (if applicable))*

## **CHAPTER 4**

### **CONSULTANT AND CONTRACTED SERVICES**

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Local Public Agency Responsibilities .....	3
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**EXHIBIT LIST\***

- 4-1 Consultant Service Agreement
- 4-2 Consultant Services Request for SOQ/RFP
- 4-3 Consultant Services SOQ/RFP Advertisement
- 4-4 Criteria for Evaluating Consultant Services SOQ/RFPs

**\*Exhibits can be found in the end of this chapter.**

## **Introduction**

This chapter provides guidance to Local Public Agencies regarding requirements that govern the procurement of consultant services or contracted service providers.

It is important to recognize that the procedures for a consultant (i.e. engineer, architect, or land surveyor) differ from that of a contracted services provider (i.e. landscape architect, biologist, appraiser, etc.).

The procedures required for procurement of construction services and materials are discussed in detail in Chapter 6, Preliminary Engineering.

## **Local Public Agency Responsibilities**

In order to be eligible for federal reimbursement of your Preliminary Engineering costs, make sure you do the following:

- Familiarize yourself with the applicable state and federal laws that govern procurement of consultant or contracted services.
- If a consultant contract is over \$10,000, select a consultant by using the competitive solicitation and negotiation process.
- If a contracted services contract is over \$5,000, select the contracted services provider by using either a limited solicitation process, or a competitive solicitation process (dependant on the dollar amount).
- Provide a copy of the draft consultant contract to CTEP for our review and approval before you fully execute that contract.

## **General Procurement Policies and Procedures**

Under FHWA/MDT administrative requirements, federal-aid fund recipients are:

- required to review proposed procurements to avoid purchase of unnecessary or duplicate items;
- required to maintain records including rationale for the method of procurement, selection of contract type, selection or rejection of consultant or contracted services provider, and the basis for the contract price;
- responsible for the settlement of all contractual and administrative issues arising out of procurement activities; and
- required to have protest procedures to handle and resolve disputes relating to procurements.

Procurement transactions must be conducted in a manner that provides full and open competition. Procurement procedures must follow all applicable state and federal laws, rules and regulations, including Title VI, and should avoid any provisions that would restrict or eliminate competition.

Publication requirements can be found in 7-1-4127, 7-1-4128 and 7-1-2121 of the Montana Code Annotated. Upon request, CTEP will provide an example format for Statements of Qualifications (SOQ) and Requests for Proposals (RFP); an example consultant services SOQ/RFP advertisement; and criteria for evaluating consultant services SOQ/RFPs.

### **Types of Contract**

There are two types of contracts that are commonly used on CTEP projects: cost plus fixed fee and lump sum. Either type will have a total contract amount that shall not be exceeded without prior approval.

- Actual cost plus fixed fee is the preferred method of compensation. It is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. The consultant or contract service provider is reimbursed for all eligible direct and indirect costs within defined limits plus a pre-determined amount as a fixed fee. The fixed fee (or profit) is limited to no more than 15% of labor and overhead.
- Lump sum compensation is not normally acceptable for construction administration agreements and is only appropriate in the PE phase where the scope of work (quantity and type) can be clearly defined in advance. Changes in the scope of work are not allowed with this type of contract.

### **DBE Participation**

You are required to take affirmative steps to assure an opportunity for all sizes of contracting organizations to compete. You must encourage DBE participation in the program in accordance with Title VI of the 1964 Civil Rights Act, subsequent federal-aid highway acts, and 49 CFR part 23. DBE's are utilized, when possible, as sources of supplies, equipment, construction, consultant services, contracted service providers, and other contracted services.

A current listing of DBE firms is available at the on-line DBE Directory on the MDT's Contractor's System page located at <http://www.mdt.state.mt.us/cntrct/contract.htm> and click on DBE Directory. For assistance in contacting or recruiting DBE companies, please contact the DBE Supportive Services Manager at 406-444-7287.



Affirmative steps may include placing MDT certified DBE's on solicitation lists; assuring DBE's are solicited whenever they are potential sources; encouraging DBE utilization by including DBE provisions in solicitations; and requiring the prime consultant or contracted services provider to take affirmative steps outlined above if there will be subcontracts. Make sure you document your DBE activities in your Civil Rights file.

### **MDT Debarment Check**

The name and address of the consultant or contracted services provider that has been selected (including the names of the principals in the firm and any subcontractors) must be provided to CTEP. You cannot make any contract award to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal-aid programs. The local public agencies and their proposed consultant or contracted services provider must certify that they and their principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible. The federal list of debarred bidders can be checked at [www.mdt.state.mt.us/cntrct/contract.htm](http://www.mdt.state.mt.us/cntrct/contract.htm). The debarment check must be completed prior to contract execution.

### **Record Keeping**

You must maintain records regarding any procurement that will be funded, wholly or in part, with federal-aid funds. Documentation should include copies of legal advertisements, affidavits of publication, requests for proposals, proposal packages, evaluation forms, and other related selection materials.

### **Procurement of Consultant Services**

Montana law, 18-8-201, MCA, requires a competitive solicitation and negotiation process (SOQ/RFP) for projects where the estimated consultant services exceed \$10,000. Local or tribal governments may use direct negotiation to obtain consultant services when the estimated cost is less than \$10,000 and it is not feasible to follow competitive negotiation procedures.

Local Public Agencies should have a written selection procedure for the competitive solicitation negotiations process. Solicitations must incorporate a clear and accurate description of the technical requirements for the product or service. The solicitation must also identify requirements that the consultant must fulfill and all factors used in evaluating the responses. The solicitation should contain features that do not restrict competition. Exhibits 4-2, 4.3 and 4.4 provide an example request for SOQ/RFP and advertisement.

After you have selected a consultant based on the written selection procedures, you will enter into negotiations with the consultant. The negotiations are where the specifics of

the project such as scope of work and estimated costs are discussed. If you cannot reach an agreement with the consultant, then the negotiation is broken off and negotiations with the next highest rated consultant begin.

The following language pertaining to the cost estimate must be included in the consultant contract: *I certify that the cost or pricing data submitted and identified to the local public agency during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price.*

### **Contract for Consultant Services**

After the estimate and contract are acceptable to both parties, the consultant should sign the contract indicating agreement with the language. The local or tribal government then forwards the draft contract to CTEP for review. You should not sign the contract at this point. CTEP will briefly review the contract to determine if the contract meets funding requirements. CTEP will return comments back to you. If the contract does not meet CTEP funding requirements, this may result in costs being ineligible for federal-aid funding.

An example contract is included at the end of this chapter (**Exhibit 4-1**). If you decide to amend an existing contract, then you will need to define the revised work scope, costs, and schedule; indicate that the terms and conditions of the original contract have been changed or remain in effect; and obtain new signatures of the parties to the contract.

### **Procurement of Contracted Services Providers**

Solicitation of contracted services providers follows similar requirements as construction contracting. You may use the SOQ/RFP method of procurement at any time. The list below allows different requirements (based on 2.5.603 of the Administrative Rules of Montana) for different levels of contracts.

- Under \$5,000 you can enter into direct negotiation with the contracted service provider of your choice.
- Between \$5,000 and \$25,000 you may complete a limited solicitation. This procedure requires a minimum of three written or oral quotations. Be sure to document what you do. Selection is based on the lowest cost for the proposed work.
- Over \$25,000 you must prepare an SOQ/RFP request and solicit from firms through public advertisements.

The written selection procedures for contracted services providers will be similar to those for consultant services. The contract review procedures will also be similar to those used for consultant services.

## **Reimbursements**

No reimbursements will be processed until copies of the fully executed and approved contracts are received by CTEP. Work completed prior to the executed contract is not eligible for CTEP reimbursement.

## **Summary**

- Procurement transactions must be conducted in a manner that provides full and open competition.
- Procurement of consultants or contracted services providers must conform to federal and state laws.
- All contracts entered into by local public agencies must contain required clauses to assure compliance with federal and state laws.
- You must retain documentation pertaining to the procurement procedures used for each contract.
- Provide a copy of the draft consultant contract to CTEP for review and approval before you fully execute that contract. **Exhibit 4-1** provides an example contract that you can use.
- Upon request, CTEP can provide an example format for Statements of Qualifications (SOQ) and Requests for Proposals (RFP); an example consultant services SOQ/RFP advertisement; and criteria for evaluating consultant services SOQ/RFPs.

EXHIBIT "A"  
CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of ***Name of Consultant Firm***, whose address is ***Address of Consultant Firm*** and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
  - (a) has employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
  - (b) has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
  - (c) has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.
2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
  - (a) is currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency or any agency of any state government;
  - (b) has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - (c) is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2(b) of this certification.
  - (d) has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.
3. That to the best of my knowledge and belief:
  - (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the **City or County of ?**, State of Montana, Department of Transportation, and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Exhibit B  
CERTIFICATE OF THE ***City or County of ?***

I hereby certify that I am the ***Title of official*** of the ***City or County of ?*** of the State of Montana, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

---

Date

Chief Executive's Signature

EXHIBIT "C"  
**NOTICE TO CONSULTANTS**

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

**A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
- (2) Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the LPA, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the LPA, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, LPA or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.

- (6) Incorporation of Provisions: Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the LPA, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier as a result of such direction, the Consultant may request the LPA to enter into the litigation to protect the interests of the LPA or State, and, in addition, the Consultant or the LPA may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."**
- (3) All video recordings produced and created under the Agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.**

Each Agreement the LPA signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: **"The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."**



**EXHIBIT "D"**  
**CTEP CONSULTANT COST ESTIMATE**

Labor Categories						
Work Elements - Tasks						
Total Hours						

Labor Categories	Total Hours	Base Wage Rate	Labor Cost
		\$	\$
		\$	\$
		\$	\$
Total Labor Cost		\$	\$

Total Labor Cost \$ \_\_\_\_\_  
 Fringe Benefit Cost \_\_\_\_\_ % x Total Labor Cost \$ \_\_\_\_\_  
 G&A Overhead Cost \_\_\_\_\_ % x Total Labor Cost \$ \_\_\_\_\_  
 Total Payroll Cost \$ \_\_\_\_\_

Direct Expenses  
     Per Diem \$ \_\_\_\_\_  
     Mileage \$ \_\_\_\_\_  
     Copies/Prints \$ \_\_\_\_\_  
     Computer \$ \_\_\_\_\_  
 Subcontractor Expenses \$ \_\_\_\_\_

Profit/Fixed Fee \$ \_\_\_\_\_

Preliminary Engineering Costs \$ \_\_\_\_\_

Construction Engineering Costs \$ \_\_\_\_\_

Total Project Costs \$ \_\_\_\_\_

**I certify that the cost or pricing data submitted and identified to the LPA during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price.**

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

Exhibit "E"  
**Scope of Work and Schedule**

Project Description

*Enter project description or can refer to appropriate sections of the contract.*

Task 1: *Heading and approximate number of days to complete*

- A. Description of work*
- B. Description of work*
- C. Description of work*

Task 2: *Heading and approximate number of days to complete*

- A. Description of work*
- B. Description of work*
- C. Description of work*
- D. Subcontract for ? with name of subcontractor*
- E. Description of work*

Task 3: *Heading and approximate number of days to complete*

- A. Description of work*
- B. Description of work*
- C. Description of work*
- D. Description of work*

## CONSULTANT SERVICES REQUEST FOR SOQ/RFP

**Note: The following is intended only as an example of a format that may be used to issue SOQ/RFPs for consultant services. LPAs should consider the content of their SOQ/RFPs very carefully before they are issued. In particular, local officials should exercise care in drafting the factors to be used in evaluating qualifications to assure that they are both complete and appropriate for your project. See also Exhibit 4-3, which is an example format used to advertise the availability of a Consultant Services request for SOQ/RFP.**

The (name of LPA) has received notice from the Montana Department of Transportation (MDT) to develop a federal-aid Community Transportation Enhancement Program (CTEP) project titled (MDT Project Name).

The (name of LPA) is Requesting Statement of Qualifications and Proposals from firms interested in performing a (explanation of scope of work to be preformed). The work performed on a CTEP project must comply with all applicable requirements under the MDT's CTEP. The project is generally described as (description of project including purpose, location, schedule, and present status).

The Scope of Work and Technical Requirements of services to be provided include:

(Insert the Scope of work and/or Technical Services the LPA expects to be preformed by the Consultant. An example is listed below)

- Design of a Bicycle and Pedestrian Path along US 2 from mile marker 45 to 50.
- The Consultant selected will design, conduct a preliminary environmental analysis, assist with contract letting, and perform all construction oversight activities.

### Legal Compliance:

Consultant performing work under the proposed contract will be subject to the Governmental Code of Fair Practices, Title 49, Chapter 3, MCA [Non-Discrimination in Hiring]; and Title 49, Parts 21 [Non-Discrimination in Federal Programs] & 23 [Participation Assurances for Disadvantaged Businesses] CFR Assurances (Titles VI).

In accordance with Section 207 of the Governmental Code of Fair Practices, Title 49, Chapter 3, MCA, the Consultant will assure that hiring of persons who will perform work on the Contract after award and prior to completion will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the Contract.

With regard to the work performed after award and prior to completion of the contract work, the Consultant will not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Title 49 Code of Federal Regulation, Part 21, including employment practices, when

the agreement covers a program set forth in Appendix A of the regulations.

Disadvantaged Business Enterprise (DBE) Goals:

Consultant DBE goals have been established for this project. A current list of MDT certified consultants is available for your use. Each firm that is invited to submit a proposal will be required to address this issue.

In accordance with our DBE goal setting procedures for the CTEP, the following DBE goals have been set for this request:

GOAL:        \_\_\_\_.\_ %

The percentage listed relates to a percentage of the overall contract amount. Your proposal must clearly identify:

- a)     The DBE firm who will perform the work.
- b)     The specific work to be performed by the DBE.

Completing the attached forms may do this.

Method of Payment:

The method of payment that will be considered for these contracted services are (1) cost plus a fixed fee for profit or 2) fixed price. The fee for these contracted services will be paid, in part, with CTEP funds.

Federal Acquisition Regulations:

Be advised that an overhead rate for the current fiscal year audited in accordance with the Federal Acquisition Regulations may be required for the contract.

SOQ/Proposal Submittal and Content:

Five copies of your qualifications must be submitted to (name of LPA official and title), (Address), (Town), Montana, (zip) by (time, date, year), and your submittal must include:

SAMPLE FORMAT FOR RFP/SOQ

In response to the initial Request for Proposal and Statement of Qualifications, the consultant's proposal will follow the outline below and provide the following information:

- I.     Describe the specific service the firm would provide. (Maximum of two pages)
- II.    Provide qualifications of the project team and technical personnel assigned to work on project.
  - A.     Provide an organization chart depicting the personnel to be used on this project, their area of expertise, registration, special training, chain of command, office location(s). Identify how much of each

person's time will be spent on the project. (If personnel from more than one office are to be utilized indicate which office.) (Maximum of two pages)

- B. Provide résumés of above personnel, including specific related project experience; identify when applicable experience for each person was obtained. (Put in Appendix A).
  - C. Provide a specific outline and description of the support services proposed to complete the entire project from start to finish, including subcontractors, drilling, aerial photography, labs, etc. (Maximum two pages)
  - D. Discuss physical plant and in-house facilities (i.e. computers, lab, etc.). (One page)
- III. Provide a brief (but specific) outline of firm's previous (highway, bridge, EIS, interchange, enhancement, etc.) projects and other projects relating to the specific project RFP, and any special abilities or experience suiting the firm for work on the particular project. Identify the time frame (beginning and completion dates) in which projects were completed and experience gained. (Maximum of four pages)
- IV. Describe how the firm proposes to perform the project as defined in the scope of work. Demonstrate the firm's competence to do the work with available manpower and resources taking into account present and projected workload. (Maximum of two pages)
- V. List as references all of the firm's clients from the past three years for projects that deal with similar work as proposed. (Put in Appendix B)
- A. Include client name, contact person, phone number.
  - B. Give range of contract value.

Evaluation of SOQ Submittals:

All submittals will be evaluated in accordance with the following factors:

**(Note:** The evaluation factors listed below are only examples. Local officials should include those factors that they believe are appropriate to the work tasks to be involved, with relative weights for each according to their priority.)

- a. 5% - Location:

This criterion may be assigned 0 to 5 percent weight depending upon necessity of firms' geographical locations and/or job expertise requirements. LPA will determine proper weight to this category for

each project.

- b. 30% - Quality of Firm and Personnel:
  - (1) Related experience on similar projects.
  - (2) Qualifications, experience and training of staff to be assigned to project.
- c. 35% - Capability and Capacity of Firm:
  - (1) Ability to meet all technical requirements.
  - (2) Capability of firm to meet project time requirements.
  - (3) Capability to respond to project and LPA and MDT requirements.
  - (4) Compatibility of systems, equipment (i.e., CADD and public visualization capabilities).
- d. 30% - Record of Past Performance of Firm in Previous Projects.  
Rating on the past performance will be done by the LPA.
  - (1) Measure of previous record with the LPA will be based on the in-house documentation of quality of work, on-schedule performance, cost performance, and cooperation with the LPA Engineer and staff.
  - (2) A limited or no previous record with the LPA will require reference checks. LPA will devise an equitable measure for this rating criterion.

Evaluation of Proposal Submittals:

All submittals will be evaluated in accordance with the following factors:

**(Note:** The evaluation factors listed below are only examples. Local officials should include those factors that they believe are appropriate to the work tasks to be involved, with relative weights for each according to their priority.)

Understanding and quality of response to Request for Proposal for consultant (architectural, or engineering, or surveying) contracts: 100%.

- a. Ability of consultant to identify project-specific issues. (25%)
- b. Ability of consultant to communicate firm's proposed approach to specific project issues. (25%)
- c. Clarity of consultant's response and understanding of LPA and MDT's project requirements. (25%)
- d. Organization of consultant's work plan. (25%)
- e. If necessary, other pertinent factors may be considered and

weights adjusted accordingly.

General:

Please state "(MDT Project Name and STPE Number)" on the outside of the response package.

Following the review and evaluation of all SOQ submittals, the list of interested firms will be narrowed to an appropriate short list. Those selected will then be reviewed for their submitted proposals (RFP). An interview may also be requested to aid us in our selection of a consultant.

The award will be made to the qualified proposer whose proposal is deemed most advantageous to the (Name of LPA), all factors considered. Unsuccessful proposers will be notified in writing as soon as possible.

Respondents may review the CTEP application which includes a description of the proposed project including scope of work, location, schedule, and other pertinent information by visiting the (Name of LPA), offices during regular office hours.

This solicitation is being offered in accordance with federal and state requirements governing procurement of consultant services. Accordingly, the (Name of LPA Governing Body) reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

If you have any questions please contact (Name and Title of Contact Person) at (phone number), (Monday through Friday between the hours of 9:00 a.m. and 3:00 p.m.).

## CONSULTANT SERVICES SOQ/RFP ADVERTISEMENT

**(Note: In order to reduce the cost of publicizing a request for SOQ/RFPs, Local Public Agency (LPA) officials may use a format such as the following to advertise the availability of a request for statements of qualifications and final proposals in lieu of publishing the entire text of the SOQ/RFP. If this approach is used, local officials should be sure to allow sufficient time for prospective proposers to request and receive a copy of the SOQ/RFP and to prepare a response).**

The (Name of City, County, or Tribe(s)) has received approval from the Montana Department of Transportation (MDT) to develop a federal-aid Community Transportation Enhancement Program (CTEP) project titled (MDT Project Name).

The (LPA Council/Commissioners) is requesting proposals and statements of qualifications for architectural/engineering (AE) services to assist the (Name of the Lead Local Office) in the design and oversight of construction of this (brief description of project) in compliance with all applicable requirements under the MDT CTEP.

Copies of the detailed request for statements of qualifications (SOQ) and Request for Proposals (RFP), including a description of the services to be provided by respondents, the minimum content of responses, and the factors to be used to evaluate the responses, can be obtained by contacting (Name of LPA official, address, and telephone number). All responses to the detailed request for SOQs and RFPs must be submitted by (date and time).



## CRITERIA FOR EVALUATING CONSULTANT SERVICES SOQ/RFPs

### **FIRM:**

The factors and questions under them are examples that are designed to fulfill federal and state requirements regarding procurement of Consultant Services (Architect, Engineer, and Land Surveyor).

You may want to adapt your SOQ and RFP, including your evaluation factors and system for awarding points, to the key issues involved in your project and the type of assistance you are seeking.

Montana law (Section 18-8-204, MCA) sets out minimum criteria that should be considered for selection of architects, engineers, or land surveyors. The factors involved in reviewing responses to a SOQ/RFP for Contracted Services are to be different from those involved in an SOQ/RFP for Consultant Services.

### **PROPOSAL RANKING FACTORS:**

Factors analyzed will be those listed as selection factors in the RFQ. The factors listed below represent items normally requested in the proposal.

Understanding and quality of response to RFP for consultant contracts.

1. **(25%) Ability of consultant to identify project-specific issues.**
2. **(25%) Ability of consultant to communicate firm's proposed approach to specific project issues.**
3. **(25%) Clarity of consultant's response and understanding of LPA and MDT's project requirements.**
4. **(25%) Organization of consultant's work plan.**

**Note:** If necessary, other pertinent factors may be considered and weights adjusted accordingly.

**Sub-total**

**TOTAL**

**GRAND TOTAL (total for qualifications and proposals)**

**DBE Schedule of Participation and Bidder's list must be completed by the selected firm.**

Signed: \_\_\_\_\_  
(RATING PANEL MEMBER)

DATE:

# TABULATION OF PROPOSALS

## RATING PANEL MEMBERS

												GRAND TOTAL
												SOQ + PROPOSAL
P												
R												
O												
P												
O												
S												
E												
R												

## CHAPTER 5

### RIGHT-OF-WAY & UTILITIES

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EXHIBIT LIST\*

- 5-1 Right-of-Way Checklist
- 5-2 Voluntary Acquisition File Checklist
- 5-3 Waiver of Procedures and Rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- 5-4 Utility Checklist
- 5-5 Agreement for Appraisal Services

**\*Exhibits can be found at the end of this chapter.**

### **Introduction**

**LPAs who foresee Right of Way or Utilities relocation as part of their project should contact the CTEP Bureau immediately for guidance.**

**CTEP projects may not incur Right of Way or Utility expenses until MDT and the FHWA have approved the environmental requirements.**

### **Local Public Agency Responsibilities**

You **must** comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR 24), State Statutes and Local Regulations during the acquisition process. These requirements also apply to donated right-of-way on which the project will be constructed. Additional acquisition guidance may be found in the FHWA Publication, "A Real Estate Acquisition Guide for Local Public Agency's."

MDT contracted services procurement procedures must be followed when procuring appraisal and negotiator services. Fees cannot be based on a percentage of the appraised or assessed value. Negotiation of fees shall be on a per parcel basis.

The CTEP Engineer must be provided with a copy of the appraisal report, deeds signed and sealed by County Clerk and Records office, buy-sell agreements, and Local Public Agency certification that right-of-way has been acquired according to all applicable federal and state regulations.

The MDT will conduct all appraisal reviews and must approve just compensation to be paid. CTEP participation is established on the appraised value, any amount offered above the appraised value must be paid by the local public agency. The local public agency concerned shall provide the property owner, a written statement of, and summary of the basis for, the amount established as just compensation for the real property. Compensation for damages to the remaining property shall be stated separately. The owner shall be paid before being asked to surrender possession of the property.

The owner of proposed donated property must be informed of their right to receive compensation for the property.

The Local Public Agency's negotiator shall maintain a log of each contact with the property owner that should include the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffer, reasons settlement could not be reached, and any other pertinent data. The report shall be signed and dated by the assigned negotiator. Real property must be appraised before the initiation of negotiations, and the owner must be given an opportunity to accompany the appraiser during the inspection of the property.

CTEP funds **will not** be eligible to participate in the cost of condemnation activities under this program.

A Right-of-Way Checklist is provided as **Exhibit 5-1**.

All Community Transportation Enhancement Program projects must be on public land or there must be a permanent easement in place.

## **Right Of Way**

### **Voluntary Acquisitions**

*A public agency that has condemnation authority can participate in the voluntary transaction process if they put in writing that they give up that right if negotiations with the property owner fail (49 CFR 24.101). See Exhibit 5-3.*

Please refer to 49 CFR 24.101(a)(1) for conditions applicable to voluntary transactions. Also refer to 49 CFR 24.101(a)(2) for conditions applicable for agencies that do not have condemnation authority.

To document acquisition of property on a voluntary basis, the LPA should complete the Voluntary Acquisition File Checklist, **Exhibit 5-2**.

A copy of the contract for sale, purchase price of the property, settlement costs, donation agreement (if applicable), recorded deed of property to the LPA, and proof of payment must be retained in the applicable ROW file. Contact the CTEP Bureau if you would like an example Agreement for Appraisal Services, **Exhibit 5-5**.

### **Non-Voluntary Acquisitions**

Please refer to 49 CFR part 24 for conditions applicable to involuntary transactions.

### **Other Acquisition Considerations**

- **Special Note on Donations.** Donation of property can occur. For donations falling under the Uniform Act, the ROW file should contain documentation that the owner was informed of their rights when agreeing to make the donation, and the file **must** include a copy of the deed for the donated property, **Exhibit 5-3**.

- **Uneconomic Remnant.** If LPA acquires only a portion of the Owner's parcel and the remaining portion(s) would have little or no utility or economic value; the agency **must** offer to acquire the uneconomic remnant as part of the total acquisition offer.
- **Tenant-Owned Improvements.** The LPA **must** offer just compensation for any improvements on the acquired property. Just compensation can be determined as the amount the improvement adds to the total value of the real property, or the salvage value of the improvement, whichever is greater.
- **Owner Retention of Improvements.** If the property owner chooses to remove any improvements that have been included in the fair market appraisal of the property, the LPA may subtract the salvage value of the removed improvements from the purchase offer.
- **Rental Payments.** If the LPA agrees to allow the owner to remain on the property for a period of time following payment for acquisition, it can charge the owner rent.

### **Acquisition of Encroachment or Enhancement Permits from MDT**

Projects on MDT right of way require an encroachment or an enhancement permit.

Encroachment permits are a District maintenance function. They may be applicable in some cases. The District Maintenance office issues them.

Enhancement permits were created as a compromise between encroachment permits and easements. The Right of Way Bureau in Helena issues them.

Contact CTEP or the District Maintenance Chief, through the District liaison, for more information on either permit.

### **UTILITIES**

There may be occasions when utilities will have to be relocated in order to construct an enhancement project. A Fast Process Agreement is generally negotiated between the MDT Right-of-Way Bureau and the utility company when federal-aid dollars are used to relocate utilities within the federal-aid right-of-way. This process is familiar to the utility companies, provides them with a single point of contact, and complies with federal requirements.

A Utilities Checklist can be found as Exhibit **5-4** in this manual.

**Record Keeping Requirements**

The LPA is responsible for maintaining files and documentation on each property acquired in the ROW file.

At a minimum, the Acquisition/Relocation file should include the following items:

- Description of property and reasons for acquisition;
- Voluntary Agreement between LPA and Individual Seller and Waiver of Procedures and Rights Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- Appraiser contracts;
- Invitation of owner to accompany appraiser;
- Copy of appraisals;
- Copy of the Written Offer to Purchase;
- Records of any negotiations with owner;
- Copy of any materials supplied by the owner to determine just compensation;
- Copies of any written agreements to waive or modify benefits or compensation;
- Evidence of payment;
- Copy of deed, buy-sell agreement and settlement costs;



### Summary

LPAs involved in the acquisition of real property for CTEP projects should keep the following in mind

- LPAs must follow the Uniform Act when acquiring property:
- Sites for construction project activities should be chosen so that displacement is minimized
- Acquisitions should be documented
- All CTEP projects **must** be on public land or have a permanent easement in place.
- You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR 24), State Statutes and Local Regulations during the acquisition process. These requirements also apply to donated right-of-way on which the project will be constructed. Additional acquisition guidance may be found in the FHWA Publication, "A Real Estate Acquisition Guide for Local Public Agency's."

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: STPE \_\_\_\_\_ ( )

## RIGHT-OF-WAY CHECKLIST

1. Yes\_\_\_ No\_\_\_ **Does the project require additional right-of-way?**
2. Yes\_\_\_ No\_\_\_ **Will consultant services be used for any part of the right-of-way/easement acquisition?** If you checked yes, and those costs are to be reimbursed with CTEP funds or counted toward the local match, CTEP contracted services selection procedures *must be used*.
3. Yes\_\_\_ No\_\_\_ **Have you provided the MDT with an accurate description of any right-of-way to be acquired along with an estimate of its value?** If you checked no, you must do so before proceeding with the acquisition.
4. Yes\_\_\_ No\_\_\_ **Has an appraisal and an appraisal review of the proposed new right-of-way been completed?** An appraisal must be completed and submitted to MDT. MDT will conduct the appraisal review to assure compliance with Federal requirements.
5. Yes\_\_\_ No\_\_\_ **Has MDT approved just compensation to be paid for all additional right-of-way?**
6. Yes\_\_\_ No\_\_\_ **Have negotiations been conducted according to Federal, State and Local requirements?** MDT may review all negotiation agreements for the purchase of right-of-way to ensure compliance with Federal and State requirements.
7. Yes\_\_\_ No\_\_\_ **Have you submitted the required certification to the MDT?** Local public agency must submit certification that right-of-way has been acquired according to all applicable Federal and State regulations. Certification must be signed by a local elected official and accompanied by the deed signed and sealed by the County Clerk and Records Office, and the Buy-Sell Agreement or Donation Statement (if applicable).

\_\_\_\_\_  
Preparer's Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Local CTEP Administrator

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## VOLUNTARY ACQUISITION FILE CHECKLIST

Name of Property Owner \_\_\_\_\_

Telephone Number \_\_\_\_\_

Location of Acquired Property \_\_\_\_\_

Property Use:	Single Family Residence	Business	Agriculture
	Multi-Family Residence	Nonprofit	

Occupants?	No	Yes	
Tenants?	No	Yes	

<u>DATE</u>	<u>DOCUMENTATION IN FILE</u>	<u>AMOUNT</u>
_____	MDT authorization to incur costs (federal ROW agreement)	
_____	Appraisal	\$ _____
_____	Contract signed/Proof of payment	\$ _____
_____	Survey Conducted and Filed	
_____	Recording of property deed	
_____	Record of settlement costs	\$ _____
_____	Filing of complaint or appeal (if applicable)	
_____	Resolution of complaint or appeal (if applicable)	

As part of its project, the local or tribal government (LPA) has acquired the parcel of land described below. The local agency office selected this site after soliciting for a voluntary offer by landowners in the general project area. The property was acquired through a voluntary proposal submitted by the owner in response to a public invitation and the LPA has determined that the acquisition is exempt from procedures required under the Uniform Act.

The LPA acknowledges that any dislocation of tenants on the property must be conducted according to provisions related to relocation in the Uniform Act, and noted in Chapter 5.

Checklist completed by:        (name) \_\_\_\_\_ (date) \_\_\_\_\_

(title): \_\_\_\_\_

**WAIVER OF PROCEDURES AND RIGHTS UNDER THE  
UNIFORM RELOCATION ASSISTANCE AND  
REAL PROPERTY ACQUISITION POLICIES ACT OF 1970**  
(used in the case of donation of property)

I/We, as property owner(s), waive, or give up, my/our right to have the (LPA of \_\_\_\_\_), State of Montana, follow completely the procedures required under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (the "Uniform Act"). I/We further waive, or give up, the right to an appraisal and to any and all claims for compensation by the (LPA) with respect to my/our donation of the (property description) described on Exhibit "A" attached to this agreement.

The (LPA of \_\_\_\_\_) has explained my/our rights and benefits as property owner(s) under the Act; has notified me/us that the (LPA of \_\_\_\_\_) waives its right of condemnation by eminent domain for acquisition of this property; and I/we have received a copy of the Montana Department of Transportation (MDT) pamphlet, *Questions and Answers On Buying Property for Montana Highways*. I/We have read this pamphlet and understand it.

I/We have offered to donate the (property description) to the (LPA of \_\_\_\_\_) on \_\_\_\_\_, 20\_\_\_\_. I/We have discussed with a representative of the (LPA) the compensation and other assistance required under the Act. I/We understand the I/we cannot be required to donate or sell the (property description) to the (LPA) for less than the appraised Fair Market Value and without other assistance to which I/we may be entitled to under the Act.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Signature of LPA Administrator)

\_\_\_\_\_  
(Signature of Seller(s))

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
\*(Notary Public)

My commission expires \_\_\_\_\_.

\* This could be any witness as this is not a recorded document. Notary will be recordation documents (i.e. deeds)

FEDERAL-AID PROJECT NAME: \_\_\_\_\_

FEDERAL-AID PROJECT NUMBER: STPE \_\_\_\_\_ ( ) \_\_\_\_\_

**UTILITIES CHECKLIST (Preliminary Engineering Activity -actual construction costs are charged to the Incidental Construction program)**

1. Yes\_\_\_ No\_\_\_ **Have utility companies/railroads been advised of possible involvement?** All involvement of utility/railroad facilities must comply with the applicable Code of Federal Regulation (23 CFR 645, Subpart A), State statutes and local regulations and ordinances.
2. Yes\_\_\_ No\_\_\_ **Are all utilities/railroad facilities identified on the plans?** All utilities/railroad facilities must be identified on the project plans.
3. Yes\_\_\_ No\_\_\_ **Have cost estimates to relocate underground or overhead utility/railroad facilities been obtained?** Cost estimates must be based on the minimum amount of work necessary and the most economical re-route.
4. Yes\_\_\_ No\_\_\_ **Has an agreement between local government or MDT and utility/railroad facility been reached?** Have necessary easements been obtained when work is to be completed on railroad property? If yes, send a copy of the agreement to MDT CTEP Engineering Coordinator.  
  
If applicable, has a "Fast Process Agreement" been negotiated between MDT and the Utility? The agreement must define the scope of work, cost participation, basis of payment (actual or lump sum), definition of work (either written or by exhibit), and the method to be used in the handling of unanticipated work.
5. Yes\_\_\_ No\_\_\_ **Work may either be completed by the utility/railroad or let to contract. Has the relocation been inspected for compliance with agreements?** If yes and all comply, have the utility submit a final bill for payment.
6. Yes\_\_\_ No\_\_\_ **Has a procedure to randomly audit the utility company bills for compliance with the terms of the Agreement been established?** If not, the local agency must develop one in order to proceed with project development.

\_\_\_\_\_  
Preparer's Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
LPA Name

\_\_\_\_\_  
Local CTEP Administrator

\_\_\_\_\_  
Date

## **AGREEMENT FOR APPRAISAL SERVICES (ACQUISITION)**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City/County/Tribe of \_\_\_\_\_, \_\_\_\_\_, State of Montana, hereinafter referred to as the "Local Public Agency," and \_\_\_\_\_, herein after referred to as the "Appraiser."

WITNESSETH THAT:

WHEREAS, the Local Public Agency proposes to acquire certain real property and desires that the Appraiser furnish the Local Public Agency certain services with respect to such property, including an appraisal of each parcel of the property, and the Appraiser represents that he is fully qualified to perform such services and will furnish such services personally; and

WHEREAS, the services to be provided under this Agreement are necessary to achieve the purposes of \_\_\_\_\_ and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

NOW, THEREFORE, the Local Public Agency and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

**ARTICLE 1. Property To Be Appraised.** A description of the real property to be appraised, including an identification of any interests in the real property to be specifically excluded from appraisal, are set forth in the attached Exhibit A. A separate appraisal is to be furnished for each "parcel." (The term "parcel" means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel to be acquired by the Local Public Agency shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered.) Each parcel shall be considered to include all right, title, and interest of the owner in or to any adjacent or abutting streets, alleys, or other public rights of way.

**ARTICLE 2. Purpose and Basis of Valuations.**

(a) **Purpose and Significance of Appraisals.** The appraisals to be furnished under this agreement are required by the Local Public Agency for its guidance in making fair and impartial determinations of fair market value and the just compensation to be offered to each property owner. The Appraiser shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the Local Public Agency. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and his analyses of the evidences of value, so that a reviewed will be able to follow the Appraiser's analyses and understand how he reached his valuation conclusions.

(b) Appraisal Standards. The appraisals under this agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principals are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin, or to racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of his report, unless the Local Public Agency has specified some other date of valuation.

(d) Relocation Assistance. The Appraiser's analyses and opinions of property value shall not reflect any allowance for the relocation payments and other assistance provided under Title II of the Uniform Act.

(e) Influence of Project on Property Value. In forming his or her opinion(s), the Appraiser shall disregard any decrease or increase in the fair market value of the real property to be acquired, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner. (In the case of a partial acquisition, using the before-and-after method of valuation, the Appraiser's opinion of the value of the remaining not-to-be-acquired portion of the property shall reflect any increase or decrease in value attributable to the project.) If the determination of changes in value caused by the project is a problem, the Appraiser's report shall cite the ruling followed and its source and shall explain the effect of the ruling on his opinion of value.

ARTICLE 3. Scope of Appraiser's Services. The Appraiser agrees to perform the following services:

(a) Appraise each parcel and prepare and deliver to the Local Public Agency, within \_\_\_\_\_ calendar days after the date of this agreement, \_\_\_\_\_ copies of the appraisal reports conforming to the provisions of this agreement. The Appraiser shall personally inspect each parcel, including all buildings, structures, fixtures, and other improvements to the property. The Appraiser shall give the owner or his designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, to the extent practicable, ascertain the rights of all parties in possession and note for consideration all factual information and comments furnished by the owner or his representative relevant to the appraisal.

(b) Testify as an expert witness in behalf of the Local Public Agency in any judicial proceeding involving any property appraised under this agreement. Such services shall include such reasonable time as may be required for reinspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the Local Public Agency, and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article 6.

(c) Modify or furnish supplements to any appraisal report furnished under this agreement, without additional cost to the Local Public Agency, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the Local Public Agency, or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the appraiser signed the report. If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraisal shall, if requested by the Local Public Agency, furnish the Local Public Agency a supplementary report updating this valuation and the supporting data and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article 6.

(d) Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to continue occupancy for an extended period after the Local Public Agency acquires the property, or the right to remove any building, structure, fixture, or other improvement. The compensation to be paid to the Appraiser for furnishing any such valuation shall be determined in accordance with Article 6.

(e) Consult with the Local Public Agency and its legal counsel regarding services to be performed by the Appraiser, at such time(s) as may be mutually convenient for the parties to this agreement. The Appraiser shall initiate such consultations whenever he is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this agreement. There shall be no charge by any party for such consultations.

ARTICLE 4. Contents of Appraisal Reports. Each appraisal report to be furnished by the Appraiser under this agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

- (a) A summary headed "Appraisal Report for (name of the Local Public Agency)" that provides the following:
- (1) Project name and number.
  - (2) Date of the report.
  - (3) Parcel number, address of the property, brief identification of all interests in the property appraised, and the name of the owner(s) including any tenant-owners.



- (4) Date(s) of the Appraiser's inspection of the property with the owner(s) or the owner's designated representative, including the name of each owner or representative of an owner who accompanied the Appraiser during his inspection and the interest held in the property or the representative capacity of each such person.
  - (5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.
  - (6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the Local Public Agency, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the Local Public Agency.
  - (7) The certifications of the Appraiser (i) that he personally made a thorough inspection of the property, (ii) that, to the best of his knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither his employment nor his compensation is contingent on the valuation reported, and (iv) that he has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial report.
  - (8) A certification that, in the Appraiser's opinion, the fair market value of the property is (an amount to be stated) as of (the date of valuation).
  - (9) The signature of the Appraiser.
- (b) The name and address of the owner of the property and the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.
- (c) The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the Local Public Agency's project. If there are any separately held interests in a parcel, which are to be acquired with other interests in the same parcel, such as leaseholds, tenant-owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.

(d) Off-record title information concerning interests or instruments that affect title, but are not of record, such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the Local Public Agency and defer completion of the appraisal until the question is resolved.

(e) Basic property data including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography, dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designed use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.

(f) Report of any condition or occupancy of the property in violation of law that may affect the value of the property.

(g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the Appraiser's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Appraiser reached his conclusions as to the highest and best use and as to the relative suitability or adaptability of the property for any other use(s) for which the property could reasonably be considered to be suitable or adaptable. The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.

(h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching his conclusion as to value and all data and analyses needed to explain and support his valuation. The supporting data and analyses furnished in the appraisal report shall include, the following:

- (1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.
- (2) An identification of the most recent sale of each property appraised and any other sales of such property during the last (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming his opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.
- (3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the Appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraiser's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.
- (4) All other information, analyses, and estimates considered by the appraiser to be relevant to the estimation of the fair market value of the property.
- (5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part or interest to be taken is such a small part of the whole property that the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the Appraiser shall be supported in his report by the data and analyses by which he reached his conclusions.

For information purposes, the appraisal report shall also contain the Appraiser's estimates of the fair market value of the to-be-acquired part of interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser shall furnish a separate estimate of the fair market value of a "parcel" comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)

- (6) Such maps, plans, photographs, or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser.
- (7) The Appraiser's evaluation of the indications of value deduced from his separate analyses of the various evidences of value and an explanation of how he reached his final conclusion as to the fair market value of the property.

(i) The opinion of the Appraiser as to the fair market value of the land, as if vacant. The valuation shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which he reached his conclusions as to the highest and best use of the land and the land value.

(j) A property analysis if the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term). The property analysis must be approved by the Local Public Agency before the appraisal is completed and, as approved by the Local Public Agency, shall be included as an exhibit in the Appraiser's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property as follows:

- (1) Ownership.
  - (i) Owner of the land.
  - (ii) Each tenant in occupancy.
  - (iii) Each non-occupant owner of any fixtures or other improvements, or personal property on the premises.

- (2) Type of property.
- (i) Building, structure, or fixed improvement.
  - (ii) Building equipment, removable.
  - (iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.
  - (iv) Personal property, identified as to types and approximate amounts, or otherwise as needed to prevent misunderstandings as to the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the Local Public Agency's project, and will not be required by the Local Public Agency to be removed, such as a pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal.

(k) If machinery and equipment or other fixtures used in a trade or business, farm operation, or institutional or governmental function constitute part of the real property, the appraisal report shall contain a separate schedule that provides separate estimates for each such item, as prescribed below. If there is more than one owner of such items, a separate schedule shall be furnished for each owner. The information and conclusions to be furnished on each item are as follows:

- (1) Description of the item, including, as appropriate, the manufacturer, model and serial number, size or capacity, age and condition, and degree of obsolescence. Accessories and spare parts, special foundations, and power wiring and process piping generally shall be listed separately, following the listing of the item(s) to which they apply.
- (2) Estimate of the replacement cost installed of the item as listed and identified (excluding any elements listed separately). Separately identify the basis of estimated replacement cost (new or used).
- (3) The contributive (enhancement) value of the item to the fair market value of the real property as a whole.
- (4) Estimated fair market value of the item for removal from the property at a purchaser's expense. Such value shall be considered to be the probable selling price if the item were offered for sale for removal from the property at the purchaser's expense, allowing a reasonable time to find a purchaser buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including salvage for serviceable components and scrap when it appears that will provide the highest value.

The schedule(s) of estimates shall be consistent, with the property analysis approved by the Local Public Agency, as provided in Paragraph 4(j). The Appraiser is permitted to use the services of such technical specialists as may be needed to enable the Appraiser to provide valid estimates and sound valuations. The schedule(s) shall be supported by an explanation of the procedures followed in gathering the necessary market information and technical data. The principal purpose of the Appraiser's accompanying narrative, however, must be to explain his analyses and his evaluations of the dollar amount of the overall contribution of the machinery, equipment, and fixtures to the fair market value of the real property as a whole. The report shall contain any layout plans, sketches, or photographs that are reasonable necessary for locating or identifying the facilities or illustrating the Appraiser's analyses.

(l) If there are separately held interests in the real property to be acquired, such as easements, leaseholds, air rights, life estates, and oil, gas, or mineral rights, and the division of ownership is not of such character as to destroy the practical unity of the property, the Appraiser shall apportion his estimate of the fair market value of the property (all interests in the property to be acquired) to each separately held interest. (However, tenant-owned improvements shall be valued in accordance with Paragraph 4 (m) below.) The report shall contain the data, analyses, and reasoning by which the Appraiser made the apportionment. If the "unit rule" is regard as not applicable because the division of ownership is such as to diminish the fair market value of the property as a whole, the separate interests involved shall be appraised separately.

(m) Tenant-owned improvements. If any building, structure, fixture, or other improvement to the property is identified as being the property of a tenant who has the right or obligation to remove it at the expiration of his term, the Appraiser's estimate of the fair market value of the improvement shall be the greatest of (1) the amount which the improvement contributes to the fair market value of the property, (2) the in-place value of the improvement as part of the real property (the depreciated replacement cost of the improvement installed), or (3) the fair market value of the improvement for removal from the property at the purchaser's expense. The appraisal report shall state the basis for the valuation of the improvement and furnish the data and analyses on which the valuation was made.

(n) If the property is a multi-family or mixed-use (residential and non-residential) property and an owner of a compensable interest in the property also occupies a dwelling in the property, the Appraiser shall furnish an apportionment of his estimate of the fair market value of the whole property to such dwelling and to the remainder of the property. For the purpose of this paragraph, an occupant of a dwelling shall be considered to own a compensable interest in the property if he holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of valuation, or holds an interest in a cooperative housing project which includes the right to occupy the dwelling, or is the contract purchaser of any of the foregoing estates or interests, or has a leasehold interest with option to purchase. The Appraiser's report shall explain how he made the apportionment.

ARTICLE 5. Services To Be Provided by Local Public Agency. The Local Public Agency agrees to furnish the Appraiser the following:

(a) A map or plat, based on official records, of the property described in Article 1, showing the boundaries and dimensions of the parcels to be appraised. A number shall designate each parcel, and the parcel numbers shown on the Appraiser's reports shall correspond to the parcel numbers shown on the map or plat. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the Local Public Agency of any such additions.

(b) An ownership data report for each parcel. That report will show all estates and interests in the parcel as shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:

- (1) The name (and address, if available) of the owner appearing on record;
- (2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title;
- (3) Identification of the conveyance(s) by which the present owner acquired title, including: the date of the conveyance(s); the date, book and page numbers, and place of recordation; the name (and the address, if available) of the grantor of such conveyance; the stated consideration; the amount of any mortgages or encumbrances placed of record or to which title was subject at time of conveyance (so far as determine from an examination of the conveyance); and the amount of any State or local transfer taxes that were based on the amount of the consideration;
- (4) Outstanding estates and other rights or interest of record, including easements, use restrictions, mineral rights, leases, and any known, but unrecorded, interests of other parties. Sufficient information shall be furnished to disclose the probable effect of such outstanding interests on the title of the record owner;
- (5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks, public utilities, and similar public facilities;
- (6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.

(c) Legal advice, upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

ARTICLE 6. Payment. In consideration of the services provided by the Appraiser under this agreement, the Local Public Agency agrees to make payments to the Appraiser upon the submission to the Local Public Agency of properly certified invoices, as follows:

(a) For appraisal reports accepted by the Local Public Agency, and for all other services furnished in accordance with Article 3, except services furnished in connection with judicial proceedings under Paragraph 3(b), the updating of appraisals under Paragraph 3(c), and the valuation of reservations of rights in owners under Paragraph 3(d), the lump sum of \_\_\_\_\_ dollars, which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

(b) For services furnished by the Appraiser in connection with judicial proceedings as provided in Paragraph 3(b) (except services as an expert witness in such a proceeding), the updating of appraisals as provided in Paragraph 3(c), and the valuation of reservations of rights in owners as provided in Paragraph 3(d), \_\_\_\_\_ dollars per hour or fraction of an hour actually engaged in performing the services, including travel time. All expenses of the Appraiser, including travel expense and subsistence, shall be borne by the Appraiser.

(c) For services as an expert witness for the Local Public Agency in judicial proceedings as provided in Paragraph 3(b), the Appraiser and the Local Public Agency hereby agree that the fair and reasonable compensation for the Appraiser's services shall be \_\_\_\_\_ dollars for each day's attendance in court.

ARTICLE 7. Agreements of Appraiser. As an inducement to the execution of this agreement by the Local Public Agency and in consideration of the agreements to be performed by the Local Public Agency, the Appraiser agrees that:

(a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform. Attached as Exhibit B, is a statement by the Appraiser, certified by him to be true and correct, setting forth his technical qualifications, general appraisal experience, specific experience in appraising properties of the type involved in this agreement, the courts in which he has testified as an expert witness, and other information pertinent to establishing his technical qualifications.

(b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this agreement.



- (c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Article 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this agreement, any person having any such interest. Until the property is acquired by the Local Public Agency or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the Local Public Agency, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
- (d) Services To Be Confidential. All services, including reports, opinions, and information, to be furnished under this agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Local Public Agency, without prior written approval of the Local Public Agency, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of his staff or organization divulges any such information except as may be required by law.
- (e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of a property appraised under this agreement, the employment of such person or persons for such purpose shall not place the Local Public Agency under any obligation of such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished under this Agreement.
- (f) Equal Employment Opportunity. During the performance of this agreement:
- (1) The Appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Appraiser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Public Agency setting forth the provisions of this non-discrimination clause.
  - (2) The Appraiser will, in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(g) Assignment. The Appraiser's rights, obligations, and duties under this agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this agreement to a bank or financial institution. This agreement may be assigned by the Local Public Agency to any corporation, Local Public Agency, or instrumentality having authority to accept the assignment.

(h) Subcontracting. None of the work or services covered by this agreement shall be subcontracted without the prior approval of the Local Public Agency.

(i) Records. The Appraiser shall maintain records of all details with respect to the services to be performed under this agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the Local Public Agency or the acquisition is abandoned, whichever is later.

(j) Affidavits of Compliance. The Appraiser will, if requested by the Local Public Agency, furnish the Local Public Agency affidavits certifying compliance with the provisions of this Article 7.

ARTICLE 8. Changes. The Local Public Agency, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

ARTICLE 9. Termination of Agreement for Cause. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner his obligations under this agreement, or if the Appraiser shall violate any of the provisions of this agreement, the Local Public Agency may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Appraiser liable for any damages caused to the Local Public Agency by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this agreement shall, at the option of the Local Public Agency, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Local Public Agency. The Appraiser, however, shall not thereby be relieved of liability to the Local Public Agency for damages sustained by the Local Public Agency by reason of any breach of the agreement by the Appraiser, and the Local Public Agency may withhold any payments from the Appraiser for the purpose of set off until such time as the amount of damages due the Local Public Agency from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Article solely for reasons of delay if the delay is due to causes beyond his control and without his fault or negligence, but this shall not prevent the Local Public Agency from terminating this agreement because of such delay.

ARTICLE 10. Interest of Members of Local Public Agency. No member of the Local Public Agency shall participate in any decision relative to this agreement affecting, directly, or indirectly, his personal interests. No such member and no other officer, agent, or employee of the Local Public Agency having any responsibility or function in connection with this agreement shall have any private interest, direct or indirect, in this agreement or the proceeds of this agreement.

ARTICLE 11. Officials Not To Benefit. No Member of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

ARTICLE 12. Notices. Any action by the Local Public Agency under this agreement may be taken by \_\_\_\_\_, \_\_\_\_\_, or such other person(s) as the Local Public Agency may, by written notice to the Appraiser, designate for such purpose. All notices to the Appraiser shall be considered to be properly given if mailed to the address specified below, or delivered personally to the Appraiser. All notices or other papers given to the Local Public Agency shall be considered to be sufficiently given if mailed, postage prepaid to \_\_\_\_\_, at \_\_\_\_\_, or to such other representative or address as the Local Public Agency may designate to the Appraiser in writing.

IN WITNESS WHEREOF, the Local Public Agency and the Appraiser have executed this agreement on or as of the date first above written.

(Appraiser)\_\_\_\_\_

(Street Address)\_\_\_\_\_

(City)\_\_\_\_\_ (State)\_\_\_\_\_ (Zip Code)\_\_\_\_\_

(Local Public Agency)\_\_\_\_\_

By:\_\_\_\_\_

(Title)\_\_\_\_\_

## **CHAPTER 6**

### **PRELIMINARY ENGINEERING**

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EXHIBIT LIST\*

6-1 Bidding Schedules (FHWA Guidance Memo)

6-2 Local Public Agency Bid Review Certification Form

**\* Exhibits can be found at the end of the chapter.**

## **Introduction**

This chapter provides guidance on the federal and state requirements that govern preliminary engineering. These activities occur prior to award of the construction contract on federal-aid projects. The related expenses are charged to the PE account. If consultant preliminary engineering services are procured by the local public agencies, the preliminary engineering activities must be detailed in the Consultant Services Agreement (see Chapter 4 of these Guidelines).

Project development activities eligible for federal-aid participation include surveys; project design (investigations, studies, tests, calculations, and report preparation); environmental review; preparation of project plans, specifications, quantity cost estimates; and the advertisement and award of the construction contract.

## **References**

Frequently used references that you, and the design engineer or architect, will need to be familiar with are as follows:

- FHWA Final Guidance January 2000
- Title 23 of the Code of Federal Regulations
- Montana Road Design Manual
- Guide for the Development of Bicycle Facilities
- Americans with Disabilities Act Accessibility Guidelines
- Secretary of Interior's Standards for Rehabilitation
- Manual of Uniform Traffic Control Devices

Several sections of the Montana Code Annotated (MCA) apply on Community Transportation Enhancement projects. Some of them are as follows:

- Tax on contractors, 15-50-201 MCA. This law requires contractors to pay the Department of Revenue a 1% license fee. This is accomplished by a requirement that local governments withhold 1% of all payments due to contractors and transmit these funds to the Department of Revenue. Contracts valued at less than \$5,000 are exempt from this provision.
- Municipal Contracts, 7-5-4302 MCA. Requires competitive bidding by cities and towns for purchase of materials or supplies in excess of \$20,000 and for construction contracts in excess of \$25,000. Also requires advertising or posting of such contracts before bids are opened and award of contracts to the lowest responsible bidder.
- County contracts, 7-5-2301 MCA. Requires competitive bidding by counties for purchases of materials or supplies and construction contracts

in excess of \$50,000. Also requires advertising or posting of such contracts before bids are opened and award of contracts to the lowest responsible bidder.

- Contractor registration, 39-9-201 MCA. Every construction contractor with employees must register with the Montana Department of Labor and Industry. FHWA regulations prohibit state provisions that require contractor registration to submit a bid or proposal, but FHWA does provide that states can require contractors to be registered prior to beginning federal-aid project work.
- Plans to bear seal, 18-2-122 MCA. You may not accept plans and specifications for public projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of a professional engineer for engineering projects or licensed architect for architectural projects, as provided for by the practice of the respective professions.
- Preferences and general matters, 18-1-101 MCA et seq. This part covers contract award to the lowest bidder, preferences to Montana residents and materials, etc. Note that the FHWA prohibits the inclusion of preference provisions pertaining to state contractors, labor or products.

### **Project Reports**

On most projects, the CTEP application will be sufficient to serve as your Preliminary Field Report, Alignment Review Report, and Scope of Work Report. The plans, specifications, and estimates (PS&E), submitted to MDT for review, will normally serve as evidence of the field review and subsequent reports. Whenever there is a subsequent change of project scope or location, a federal-aid program revision must be requested by you.

When projects are located on the state maintained system, you may be required to prepare and submit the following reports as discussed in the MDT Road Design Manual: Alignment Review, Scope of Work, Preliminary Plan-in-Hand, and Final Plan Review. MDT must be invited to these meetings and provided with copies of the prepared reports.

### **Design Documentation**

MDT may request design reports or the design files containing computations, assumptions, tests, investigations, and other relevant information. Local or tribal governments are required by the FHWA and the MDT to retain all relevant design documentation for three years after the project has been closed at their offices. If consultant services are used, then you must retain copies of all project related documents for their records.

**Plans, Specifications & Estimating Requirements**

Project plans show the design, locations, and dimensions of the work. Plans must: provide sufficient information for MDT reviewers to be reasonably assured that the project will be built in accordance with applicable standards and provide for a *level playing field* for prospective bidders.

Standard conditions, specifications, forms, etc. referenced on a CTEP project will be limited to the MDT Standard Specifications for Road and Bridge Construction (MDTSS) and the Montana Public Works Standard Specifications (MPWSS). All bid packages that do not reference one of these standards must include all contract conditions, specifications and administrative forms.

Technical specifications should include: 1) general description of the work, 2) products and materials, 3) execution of the work, and 4) method of measurement and payment. Supplemental specifications or special provisions may be necessary on some projects. CTEP Special Provisions will be required on all projects.

The cost estimate shall include the quantity and unit price for each proposed work item. If applicable, the estimate shall separately list the cost of work item that will be funded through sources other than CTEP.

**Project Manual Preparation**

CTEP uses the term 'Project Manual' to refer to the combined bid package of project plans, specifications and other contract documents. Three options are available to engineers and architects when preparing project manuals. They include the latest edition, plus addendum, of the Montana Public Works Standard Specifications (MPWSS); the MDT's Standard Specifications for Road and Bridge Construction (MDTSS); or stand alone methods. The third option is often used on architectural projects is the American Institute of Architects (AIA) documents.

Specifications other than MDTSS and MPWSS must be physically incorporated into the project manual. However, nationally recognized standards such as ASTM, may be incorporated by reference. Referenced standards must be available for review by FHWA, MDT, bidders and the public.

Project Manuals must be bound and will generally contain the following:

- Cover Sheet;
- Table of Contents;
- Invitation to Bid;
- Instructions to Bidders;



- DBE requirements;
- Acknowledgement of receipt of addenda;
- Schedule of Items;
- MDT Proposal form;
- Bid Bond form;
- Agreement form;
- Payment and Performance Bond forms;
- Standard General Conditions;
- Supplementary Conditions;
- Wage Rates;
- FHWA 1273 form;
- EEO Affirmative Action Requirements;
- CTEP Special Provisions;
- Technical and Supplemental Specifications; and
- Plans

There are mandatory forms, available on our website, for the DBE requirements, MDT Proposal, FHWA 1273, EEO Affirmative Action, and CTEP Special Provisions. Our web site address is ([www.mdt.state.us/planning/ctep/](http://www.mdt.state.us/planning/ctep/)).

### **Wage Rates**

The wage rates can be found on the Department of Labor and Industry's web site. There is a link to the Federal Davis Bacon wage rates at that site. Their web site address is (<http://rad.dli.state.mt.us/pw/>). Contact us for assistance in determining the correct wage rate.

You must verify that the wage determination is the most currently available. Therefore, not less than 10 calendar days prior to bid opening, you should verify that the wage rate decisions in your project manual are current. If the wage rates have changed, you will be required to issue an addendum. Changes to the wage rates less than 10 days before the bid opening need not be utilized.

Federal Davis-Bacon wage rates apply to construction contracts, greater than \$2,000, if any part of that project touches state or federally maintained right of way. If a project estimated to cost in excess of \$25,000 is located on a roadway classified as a local road or rural minor collector, the state prevailing wage rates will prevail. Projects less than \$25,000 on local roads or rural minor collectors will require the contractor to meet the current minimum wage rate.

### **Other Project Manual Items**

A few other commonly applicable items to note when preparing your project manual are included below.

- Traffic control must be in accordance with the Manual on Uniform Traffic Control Devices. A special provision should be prepared outlining traffic control requirements and including any pay items.
- The use of proprietary trade names is forbidden by FHWA. Specifications should be written to assure full opportunity for competition among equivalent materials, equipment, and methods.
- It is mandatory that you not violate competitive bid principles. FHWA has issued a memorandum that illustrates the use of bid schedules. A copy of this memorandum is attached as Exhibit 6-1.

### **Bid Process**

Before inviting bids on any contract, ensure the project manual contains all the relevant information bidders will need and you have received written authorization from MDT to proceed with the bid letting process. The environmental document must be fully executed and all right of way in place before MDT will authorize a bid letting.

Your construction budget should be sufficient to cover a reasonable award contingency. For projects where the award decision will be based on the **available funds**, you must notify the MDT of this amount prior to opening bids. MDT will not concur in the award of any contract that exceeds this established amount when **available funds** will be used to decide contract award.

When MDT authorizes you to solicit bids, you will be instructed to contact the appropriate District Administrator who will assign a District Representative to work with you during the construction phase. The District Representative must be invited to the pre-construction conference.

MDT must approve any addendums to the plans or specifications. Approved addendums must be mailed to each plan holder and every prospective bidder must be given an appropriate period of time to review and respond. You will need to maintain a plan holders list to accommodate any addendums.

The advertisement and approved plans and specifications shall be available to bidders a minimum of three weeks per 23 CFR 635.112. Please refer to 7-5-4302 MCA and 7-5-2301 MCA for additional state requirements for cities and counties, respectively.

A limited solicitation process may be utilized when your construction costs are estimated to be less than:

- \$25,000 for cities - with labor involved;
- \$20,000 for cities - purchases only; and
- \$50,000 for counties.

Contact your CTEP Engineer for details regarding the solicitation requirements for your project.

### **Bid Opening**

Upon receipt, each bid should be logged as to the time and date of receipt. The bids should remain sealed and safely stored until the bid opening.

The bid opening should be conducted in a business-like manner with each bid being opened and reviewed prior to reading aloud the dollar amounts. Your attorney should participate in the bid opening. If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. You should indicate why the bid was not read. Should a bidder identify an error in the bids, in any form, your attorney should review the state statutes and project manual governing bid irregularities before proceeding further. When all matters of bid irregularities are resolved, the low bidder will be determined.

A bid proposal is irregular and **will** be rejected as non-responsive if:

- Bidder fails to properly sign the bid proposal;
- There are unauthorized additions, conditional or alternative bids, or irregularities that make the bid package incomplete, indefinite, or ambiguous;
- The proposals for two or more projects advertised separately are connected or made contingent one upon the other so that the proposal for one project carries a provisional deduction in the bid price on one or more of the other projects;
- Any unauthorized provisions are added reserving the right to accept or reject an award or to enter into a contract pursuant to an award;
- More than one proposal for the same work from an individual, firm, corporation, partnership or joint venture under the same or different name is submitted;
- If evidence of collusion among bidders exists, participants in collusion will not receive recognition as bidders, either singly or as a joint venture, for future work until re-instated as qualified bidders.

A bid proposal is considered irregular and **may** be rejected as non-responsive if:

- The bid proposal is altered;
- Bidder fails to include a name and mailing address;
- The unit prices contained in the proposal are obviously unbalanced, either in excess of or below the reasonable cost analysis value;
- Information entered in the proposal by the bidder is not legible;
- There are changes in the proposal such as erasures, strikeouts, and white-outs that are not initialed in ink;
- Non-Compliance with the Disadvantaged Business Enterprise requirements.

Public construction contracts must be awarded fairly and in a manner that ensures public funds are used as efficiently as possible. These objectives may be accomplished only if all bidders are required to respond to the same project specifications. Consequently, under no circumstances can you negotiate with the low bidder to bring the offer in line with the project budget.

### **Bid Review**

Following the bid opening, the bids should be reviewed to ensure that the bid submission was technically and legally responsive to the solicitation for bids. If in the opinion of the consultant and your attorney, the low bid proves to be unsatisfactory for any reason, and you choose to use the next lowest bidder, a statement of justification must be sent to MDT for concurrence in the decision.

### **Obtain Award Concurrence**

Prior to awarding any construction contract, you must request award concurrence from MDT. The award concurrence request must include the following from all bidders:

- a table of all bids received;
- the name of the contractor and its' principal owners;
- a copy of the proposal form;
- a schedule of items (bid form); and
- the DBE forms.

A bid review certification form must be submitted with your request. A copy of this form is available on our website ([www.mdt.state.us/planning/ctep/](http://www.mdt.state.us/planning/ctep/)). A copy is also attached as Exhibit 6-2.

CTEP funds may be withheld from any contract entered into without MDT award concurrence.

### **Maintain Records**

You are responsible for maintaining design and construction files to include the following:

- design details;
- cost estimates;
- minutes of design review meetings;
- MDT and consultant correspondence;
- project manual and plans;
- evidence of bid advertising;
- minutes of bid opening;
- tabulation of bids;
- evidence of low bid review; and
- MDT award concurrence letter.

**Summary**

Please remember to do the following:

- Familiarize yourself with the applicable standards and codes.
- Hire a qualified engineer or architect to assemble the plans and specifications.
- Make sure that all mandatory forms are in each project manual, such as the FHWA 1273 and EEO forms, DBE forms, MDT Proposal form, CTEP Special Provisions, and wage rates.
- Understand solicitation requirements.
- Obtain CTEP approval, in writing, to proceed with the bid letting.
- Conduct a fair bid opening.
- Get CTEP approval, in writing, to proceed with award concurrence.
- Maintain records.

# Route Slip

## FHWA GUIDANCE

To:

Date

Org/Rtg Symbol

Division Administrators

September 29, 1995

See Below

☐ Per Your Request  
☒ For Your Information  
☐ Per Our Conversation  
☐ Note and Return  
☐ Discuss With Me  
☐ For Your Approval

☐ For Your Signature  
☐ Comment  
☐ Take Appropriate Action  
☐ Prepare Reply for Signature of \_\_\_\_\_

### Remarks:

A local agency recently proposed to advertise a Transportation Enhancement project with contract language that would permit the contracting agency to select the bid items that would be used to determine the apparent low bidder after receipt of bids. The agency had a fixed amount of funds available for the project and wanted to get the maximum amount of work constructed without readvertising again and again until they balanced the low bid with funds available.

The proposed procedure violated competitive bid principles and was not permitted, however we can appreciate the need to match the low bid with funds available as closely as possible.

Attached are sample sheets from a CFLHD proposal that illustrate the use of a bid schedule that requires complete bidding on three scenarios. Fiscal constraints tie to the selection of the lowest responsive bid.

Please share this information with your state highway agency as you deem appropriate as they may be faced with similar situations.

If you have any questions, please advise.

HDA-CO, HDA-MT, HDA-ND, HDA-SD, HDA-WY, HDA-UT Original to File: HES 421.60

From:

Telephone

Org/Rtg Symbol

Bill Hakala

(303) 969-5772 ext. 339

HES-08

(entered by CTEP Bureau staff, with some editing for clarity)

Recommended placement: Instructions To Bidders (MDT)

**BIDDERS PLEASE NOTE: Before preparing the bid, read carefully the Solicitation Provisions.**

This Bid Schedule is comprised of three separate, but related schedules of work as follows:

Schedule A: Road reconstruction, retaining walls, - parking areas and underground electrical on 2.750 miles.

Schedule B: Road reconstruction, retaining walls, parking areas and underground electrical on 3.270 miles (Include Schedule A).

Schedule C: Road reconstruction, retaining walls, parking areas and underground electrical on 4.123 miles (Includes Schedules A & B).

To be eligible for award of contract, the offeror shall submit prices for each item in each of the three schedules.

The purpose of the three separate schedules is to give the government maximum flexibility in obtaining the greatest possible amount of work within the limits of the funds available at the time of award. Award of contract will be made on one schedule only.

The government has determined that the maximum construction possible within the limit of funds available will be obtained by selection of one of the following schedules, listed below in descending order of importance to the government.

1. Award of Contract for Schedule C
2. Award of Contract for Schedule B
3. Award of Contract for Schedule A

Accordingly, award of contract, if made, will be made on a total bid basis to the lowest, responsive, responsible bidder bidding on Schedule C, if funds are available.

If funds are not available for the foregoing Schedule C, award of contract, if made, will be made on a total bid basis to the lowest responsive, responsible bidder bidding on Schedule B, if funds are available.

If funds are not available for the foregoing Schedule B, award of contract, if made, will be made on a total bid basis to the lowest responsive, responsible bidder bidding on Schedule A, if funds are available.

The possibility of there being different low bidders on the different schedules is recognized, and prospective bidders are hereby notified that there will be no basis for protest by any bidder whose bid would have been lowest under a different schedule than the one selected for award.

### SCHEDULE OF ITEMS "A"

Federal-Aid Project Number: PRA SEQU 10(2)

BIDDERS PLEASE NOTE: BEFORE PREPARING THE BID, READ CAREFULLY THE SOLICITATION PROVISIONS.

THE BIDDER SHALL SPECIFY A UNIT PRICE IN FIGURES FOR EACH PAY ITEM FOR WHICH A QUANTITY IS GIVEN AND SHALL ALSO SHOW THE PRODUCTS OF THE RESPECTIVE UNIT PRICES AND QUANTITIES WRITTEN IN FIGURES IN THE COLUMN PROVIDED FOR THAT PURPOSE AND THE TOTAL AMOUNT OF THE BID OBTAINED BY ADDING THE AMOUNTS OF THE SEVERAL ITEMS. IN CASE OF DISCREPANCY BETWEEN UNIT PRICE AND BID ITEM TOTAL, THE CORRECTED UNIT PRICE EXTENSION WILL GOVERN. ALL THE FIGURES SHALL BE IN INK OR TYPED. A UNIT BID PRICE IS NOT TO BE ENTERED NOR TENDERED FOR ANY PAY ITEM FOR WHICH NO ESTIMATED QUANTITY APPEARS IN THE BID SCHEDULE.

### SCHEDULE OF ITEMS "A"

ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	1.462		
15203	Centerline Re-establishment	Mile	2.807		
15204	Drainage Structure Survey and Staking	Each	27		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	80		
15207	Grade Finishing Stakes	Mile	2.924		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	13		
15214	Paved Waterway Survey and Staking	Mile	0.362		
15301	Contractor Quality Control	Lump Sum	All		



ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
<b>TOTAL BID SCHEDULE "A"</b>		\$			

Written Bid for Schedule "A":

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SIGNATURE OF BIDDER

Date

**SCHEDULE OF ITEMS "B"**

ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	1.983		
15203	Centerline Re-establishment	Mile	2.807		
15204	Drainage Structure Survey and Staking	Each	34		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	80		
15207	Grade Finishing Stakes	Mile	3.966		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	16		
15214	Paved Waterway Survey and Staking	Mile	0.5		

ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15301	Contractor Quality Control	Lump Sum	All		
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
<b>TOTAL BID SCHEDULE "B"</b>		\$			

Written Bid for Schedule "B":

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF BIDDER Date

**SCHEDULE OF ITEMS "C"**

ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	2.447		
15203	Centerline Re-establishment	Mile	2.816		
15204	Drainage Structure Survey and Staking	Each	43		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	120.0		
15207	Grade Finishing Stakes	Mile	4.894		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	18		
15214	Paved Waterway Survey and Staking	Mile	0.504		

ITEM No.	ITEM	UNIT OF MEASURE	QUANTITY	UNIT BID PRICE	AMOUNT BID
15301	Contractor Quality Control	Lump Sum	All		
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
<b>TOTAL BID SCHEDULE "C"</b>		\$			

Written Bid for Schedule "C":

\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF BIDDER Date

**Bid Schedule Summary:**

Schedule "A" \$ \_\_\_\_\_

Schedule "B" \$ \_\_\_\_\_

Schedule "C" \$ \_\_\_\_\_

Submitted By: \_\_\_\_\_  
(Name of Contractor)

## LOCAL PUBLIC AGENCY BID REVIEW CERTIFICATION FORM

As a duly authorized representative of the Local Public Agency of \_\_\_\_\_  
whose address is \_\_\_\_\_, \_\_\_\_\_, Montana, 59\_\_\_\_.

Project Name: \_\_\_\_\_ Project Number: STPE \_\_\_\_\_ Control No. \_\_\_\_\_

Description of Contract Work:

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Bid Opening Date: \_\_\_\_\_

**Recommended Successful Low Bidder:** \_\_\_\_\_

I hereby certify as follows:

**GENERAL:** During the performance of this bid review and preparation of our request for concurrence in the award of this contract the local agency has performed the appropriate tasks as indicated in the CTEP Proposal and Guidelines.

The bids delivered as specified were opened and publicly read at the established time and place. Bids received but not read aloud had the name of the bidder and the reason for not reading the bid aloud publicly announced at the letting.

During the bid letting, the bidder's name, address and amount of bid was recorded for all bids read on the Bid Recorders Sheet.

**EXAMINATION AND CHECKING OF BID PROPOSAL:** After the bids were read and recorded, examination and checking of bid proposals activities occurred.

The proposal guaranty was checked for the name of the contractor, the appropriate recipient, the specified percentage, project number, and signature. When applicable, the power of attorney document signature was compared to the guaranty and the allowable percentage was verified, as were dates and signatures. If a check was received, a copy was attached to the bid package and the check was properly stored.

Each "Schedule Of Participation By DBE's" form was examined to be sure the name of the Prime Bidder is listed. The form from each bidder's proposal was evaluated to determine if DBE goals were met.

Unit prices and extensions were checked for legibility. If discrepancies were found, the unit price prevailed unless it was ambiguous, illegible, unintelligible, uncertain, omitted, or is the same as the Total Price, then the amount set forth in the Total Price column prevailed. On unit price contracts this amount was then divided by the estimated quantity for the item, and the price thus obtained was used as the unit price. These

corrections, if any, were made on a copy of the bid sheet only and initialed by the reviewer.

Each Proposal Sheet was examined for the name and address of the bidder, and the signature and seal of the notary.

Each submitted proposal was checked for acknowledgment of receipt of Addendum, if any were issued.

The original bid proposals were not marked or taken apart. Any changes made by addendum to documents in the proposals which required completion by the bidder, were included in the bid proposal unless noted otherwise. All errors or discrepancies, if any, are noted on the original "as read" Bid Recorders Sheet and on the Tabulation Work Sheet.

COMPARISON AND ANALYSIS: An analysis and recommendation was made if the cost of the low bid was:

1. \$100,000.00 or less and exceeds the Estimate by more than 20%.
2. More than \$100,000.00 to and including \$200,000.00 and exceeds the Estimate by more than 15%.
3. More than \$200,000.00 and exceeds the Estimate by more than 10%.

The analysis may have included, but may not have been limited to, the following:

1. When the differences between the estimate and low bid were in excess of the above, or when there was poor competition, the plan holders (both bidders and non-bidders) may have been contacted for any information they may have to offer.
2. A review of the Estimate compared to the low bid, taking into consideration previous bids for like work (size and type) in the same general area, price trends in material, equipment and labor, and any unusual conditions that were present.

Copies of all irregular bids, if any, have been attached to the letter requesting MDT concurrence in award for MDT review.

The selected contractor will not be allowed to begin work prior to receiving MDT concurrence in award and the execution of a construction contract; providing the necessary Montana Contractors License in the appropriate class; a performance, labor and materials bond; and proof of insurance.

I acknowledge that this certificate is to be furnished to the State of Montana, Department of Transportation in connection with this project involving participation of Federal-Aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
Signature of Local Public Agency Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office Held

\_\_\_\_\_  
Local Public Agency Name

## **CHAPTER 7**

# **CONSTRUCTION ENGINEERING & CONSTRUCTION**

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**EXHIBIT LIST\***

- 7-1 Construction Checklist (Construction Engineering Activity)
- 7-2 Pre-construction Meeting Planning Guide
- 7-3 Spot Check Interview Form
- 7-4 Commercially Useful Function (CUF) Review Report
- 7-5 Miscellaneous Material Form 46
- 7-6 Special LPA Materials Acceptance Requirements
- 7-7 Certificate of Substantial Completion
- 7-8 LPA Force Account Work
- 7-9 Request for Quotation
- 7-10 Equipment Rental Rate Form
- 7-11 Certificate of Completion

**\*Exhibits can be found at the end of this chapter.**

## **Introduction**

This part of the guide discusses considerations relating to construction engineering and construction account requirements on federal-aid projects.

Construction Engineering (CE) account activities include construction contract administration, construction inspection and all other related documentation requirements discussed in this chapter or referenced.

The two construction accounts are as follows:

- Incidental Construction (IC), 9302 account; and
- Construction (CN), 9502 account (contracted construction and Local Public Agency (LPA) Force Account).

## **References**

The following state and federal requirements, while not complete, establish basic references for the consideration of LPAs, consultants; service, construction, and other contractors. In addition to the following, transportation enhancement fund recipients must comply with applicable construction requirements discussed in the other chapters of this guide.

### **Federal (selected references)**

- Administration of Engineering and Design Related Service Contracts (23 CFR Part 172) This regulation sets forth policies and procedures for contracting to ensure that a qualified consultant is obtained through an equitable selection process and that the work is properly accomplished in a timely manner, at a reasonable cost. This regulation applies to all engineering and design related service contracts.
- Federal-Aid Construction Contracts (23 CFR Part 633, Sub-part A) Prescribes the method for inclusion of required contract provisions or existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of the contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time to time be required by law and regulation as conditions of Federal assistance.
- Contract Procedures (23 CFR Part 635 Subpart A) Prescribes policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the FHWA.



- Manual of Uniform Traffic Control Devices, Millennium Edition, Part 6, Temporary Traffic Control, Provides standards for work zone safety and temporary traffic control.

**State (selected references)**

- Tax on Contractors (Title 15, Chapter 50, Part 2, MCA) Requires contractors to pay to the Department of Revenue a 1% license fee and, in addition, requires local governments to withhold this 1% of all payments due to contractors and transmit these funds to the Department of Revenue. Contracts valued at less than \$5,000 are exempt from this provision.
- Performance, Labor and Material Bonds (Title 18, Chapter 2, Part 2, MCA) Requires contractors to provide a bond that ensures that the contractor will perform all provisions of the contract. This provision may be waived if the contract is under \$5,000.
- County Weed Control (Title 7, Chapter 22, Part 21, MCA) Seeding plans must comply with the district weed management plan and describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used. The plan is subject to the written approval of the district weed management board.
- Traffic-Control Devices (Title 61, Chapter 8, Part 2, MCA) All traffic control devices erected must conform to the state manual and specifications.
- Contractor Registration (Title 39, Chapter 9, Part 2, MCA) Montana law requires all contractors to register with the Montana Department of Labor. On Federal-aid projects, contractors must register prior to executing a contract. For information regarding this requirement, contact the Department of Labor (406) 444-7734.
- Engineer or Land Surveyor to Supervise Project (18-2-121, MCA) LPAs shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer (for engineering projects) or land surveyor (for land surveying projects). (See also 18-2-113, 18-2-114, 18-2-121, 37-65-308, 37-66-308, and 37-67-314, MCA.)
- Relocation of Utilities, 60-4-401 MCA et sequential, states that the "cost of relocation" means the amount paid by the utility for materials, labor and equipment that properly attributes to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility. "Cost of relocation" does not mean engineering costs for designing, locating, staking, inspecting or any other incidental costs of engineering.

**Local Public Agency Responsibilities**

The following sections are provided as a guide to construction oversight requirements on federal-aid projects. They should be followed along with applicable requirements found elsewhere in this guide. Construction Engineering activities begin with the review of the contractor's submission of the signed contract agreement. Insurance certificates, performance and payment bonds and contractor's registration must be submitted prior to executing the contract agreement. **Exhibit 7-1, Construction Checklist**, is provided as a summary guide for Construction Engineering activities.

If you determine the assistance of consultants is required, the procedures found in Chapter 4, **Consultant and Contracted Services** must be followed. A licensed architect or engineer must be in responsible charge of work when required by law. If you are not sure of the requirements consult your legal counsel and then CTEP.

**Construction Engineering Account Activities**

The term construction engineering (CE) refers to construction contract administration, construction oversight, construction control staking, and construction inspection (quality and quantity measurement). This includes ensuring compliance with Civil Rights, Equal Employment, Disadvantaged Business Enterprise (DBE) Program requirements, Labor Standards, and Permit conditions. All CE activities must be documented and the documentation maintained in the LPA project files.

The LPA is ultimately responsible for all CE activities, even though consultants are contracted for such duties. LPA qualified personnel may perform some construction contract administration functions. The LPA qualified personnel or consultant **must** perform Civil Rights, Equal Employment, DBE Program and Labor Standards compliance duties.

**Pre-Construction Conference and Notice to Proceed**

The LPA will schedule a pre-construction conference after the contract agreement has been executed.

The pre-construction conference should be held as soon as possible after the contract award. The conference attendees should include all contractors, subcontractors, utility companies, railroad companies, MDT District Liaison, and other agencies with interests in the intended construction. The LPA is to ensure all primes and subs are present and informed that they must comply with the federal labor standards and civil rights provisions.

The conference represents a key opportunity for the LPA and contractor to review contract requirements prior to beginning construction. This review should include such items as contract time, contractor's schedule, progress payments, and contractor responsibilities relating to civil rights, labor standards, and other federal, state, and local requirements. At this meeting, the contractor should be given a summary of the basic contract requirements. Minutes of the pre-construction conference should be distributed to all attendees and a copy placed in the construction contract file. See the Pre-construction Conference Planning Guide, **Exhibit 7-2**, for more information.

Upon execution of the contract and holding the pre-construction conference the LPA may then provide the prime contractor with a Notice to Proceed. This notice establishes the construction starting date and the estimated date of completion. Although a notice may be issued, contract work may not begin until a pre-construction conference is held.

In the event a contractor is unable to substantially complete a construction project within the specified contract time, the LPA may assess liquidated damages. The amount of liquidated damages, as specified in the contract agreement, can be deducted from any payments due the contractor. These assessments must be consistent with the corresponding provisions of the contract documents.

### **Monitor Contract**

Throughout the construction period, the LPA (or the owner's representative) is responsible for monitoring the contractor for performance with the contract conditions, provisions, and technical specifications and for compliance with all other applicable federal, state and local regulations. Exhibit 7-2 contains a summary of requirements pertaining to civil rights activities.

**Job Bulletin Board-** Each prime contractor must have a job bulletin board. Information posted not only applies to the prime, but is applicable to all subcontractors. The job bulletin board must be checked periodically for the following:

- Contractor EEO Policy Statement
- Contractor EEO Officer letter of appointment
- Contractor Discrimination Complaint Procedure
- Contractor Employee Discrimination Complaint Form
- EEO is the Law Poster
- Dual Employment/Notice Poster
- FHWA Form 1273
- Wage Rate Information Poster
- Current Wage Rates

**Spot Check Interviews-** Interview the contractor and subcontractor employees to determine if they are aware of the location of the job bulletin board; the wage they are to be receiving and the classification of work they are performing (when Federal Davis Bacon Wage Rates apply) and how to contact their EEO Officer. Form LC-1, Spot Check Interview Form, is used to conduct the spot check interviews. An example is provided as Exhibit 7-3.

If employees are unaware of any of the above, note it and take immediate action to correct the situation.

The LPA has the responsibility to interview contractor and subcontractor employees to determine the type of work they are performing and the wage they receive. This information is then compared to the certified payrolls and the applicable wage rates. Should discrepancies arise, contact the appropriate regulatory agency. Refer to the wage rate schedules of the contract documents for reporting discrepancies.

Spot Check Interviews are to be conducted during the second and fourth week that the prime and each subcontractor are on the project site and once a month thereafter.

Select a random number of contractor employees who are representative of each craft to interview. A different group of contractor employees should be selected for the second spot check interview. As a general rule, interview at least one third of the contractor's personnel during each spot check. **Be advised that the Civil Rights Bureau of the MDT may conduct on site unannounced visitations at any time.** It is the responsibility of the LPA or his Consultant to furnish all information and render assistance to make a complete and detailed investigation for this federal-aid project.

If the contractor's work force is comprised of four or less employees, the initial spot check interview should be done with all employees. If no turnover, the follow-up spot-check interviews are not necessary unless the work force changes or if problems are suspected.

When Federal Davis-Bacon Wage Rates are required, once each spot check has been accomplished, the contractor employee information must be compared to the payroll with the same week ending date. All persons interviewed must be on that payroll and must have been paid wages for the proper labor classification. If the employees are not on the payroll for the corresponding week, the contractor must be immediately notified and a supplemental payroll requested.

**DBE Monitoring Responsibility** – In general, expenditures to a DBE contractor will only be counted towards a DBE goal when it has been determined that the DBE is performing a commercially useful function (CUF) on the contract. You should monitor the performance of DBEs to ensure performance of a commercially useful function, by using CUF Review Report, Exhibit 7-4. This report should be turned in to the CTEP Program for evaluation.

**Certified Payroll Requirements on Federal-Aid Projects** - Certified payrolls are only required when the Federal Davis-Bacon Wage Rates are used; however, most LPAs require contractors to submit certified payrolls for all projects. A certified payroll form, and instructions how to fill it out, can be obtained from the MDT Civil Rights Bureau or found on the U.S. Department of Labor's Web site. (The payrolls are considered a confidential document because of the social security numbers they contain.)

The prime and each subcontractor **must** submit to the LPA two copies of each weekly-certified payroll within seven days following the end of the pay period. Delay in the submittal of the certified payroll can result in the withholding of progress payments. All persons performing work on the job site must be shown on the payroll.

Certified payrolls and statements of compliance **must** be complete and must be reviewed by the LPA. A portion of the review **must** consist of comparing the certified payroll with information gathered from the spot check interviews.

Prime contractors are responsible for the submittals of payrolls by their subcontractors.

The contractor must preserve all payroll records, including time cards, for a three-year period following the completion date of a federal-aid contract. The contractor must make their payroll records available for inspection by authorized representatives of the contracting agency and/or the U.S. Department of Labor.

If the classification code on the certified payroll form differs from the classification group in the contract, the contractor **must** submit two copies of the company's classification codes with the first payroll. These contractor codes must be easily comparable to the MDT classification code system.

Example:	Contractor Code	MDT Code
	112 general laborer	1-1 general laborer

**Monitor Construction**

**Contractor Payments** - Progress payments must be based on measurements of work performed so the contractor can be fairly compensated and so public funds will not be expended on work that has not been completed. Progress estimates should be prepared on a pre-selected date each month. The LPA or consultant shall provide written documentation for the quantities paid each month. Progress estimates may be forwarded to the contractor for review and signature. The contractor is not required to submit a pay request; however, the contractor pay request will allow the LPA or consultant to compare independent quantity measurement records prior to requesting reimbursement. Daily inspection reports must reflect work completed.

**Retainage and Gross Receipts Tax** - Partial payments are generally 95 percent of the total amount of compensation earned. The remaining five percent is held pending the final inspection and acceptance of work. The actual amount retained may vary depending on the amount of the contract, progress of construction, and other specific provisions in the contract agreement.

In addition to the retainage, the LPA must retain one percent of the total amount of each partial payment due to the contractor and transmit these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax. Contracts of less than \$5,000 are exempt from this provision. To request a copy of the applicable form call the Department of Revenue at 444-6900 and ask for the Contractor Gross Receipts Section.

**Materials Acceptance** - Documentation of all materials used on a project is required by the FHWA and will insure continued federal-aid participation. MDT may request a written project-testing summary to evaluate LPA compliance with program assurance testing and materials acceptance requirements.

Many items will only require a completed Miscellaneous Material Form 46, Exhibit 7-5, and a Manufacturer Certification. The Form would be completed after the material has been inspected and the LPA is satisfied that the material meets the requirements of the contract documents.

A table of material acceptance requirements for CTEP projects is provided as **Exhibit 7-6, Table of Special LPA Materials Acceptance Requirements**. For materials not covered by the table, the LPA is required to meet the requirements identified in the MDT Materials Manual or the applicable methods identified in the latest version of the MPWSS. Materials not covered in either will require identification of acceptance requirements in the Preliminary Engineering phase of project development.

Items requiring testing must be sampled and the samples taken to the testing lab or prior arrangements must be made to have the test equipment and a technician on the project to perform testing. If the testing is to be scheduled by the contractor, the results of the tests must be sent directly to the LPA or consultant.

Materials that do not meet the specified requirements may be rejected and if rejected must be replaced by the contractor. The contract documents may allow the LPA to recover costs from the contractor for retesting of failed materials.

The completed forms, manufacturer certifications, product labels, catalog cuts, and test results become part of the project files and must be kept with other project documents. It is not necessary to submit the documentation to CTEP; however, District Liaisons will randomly audit projects and this information must be in the project file to document material acceptance.

### **Change Orders & Extra Work**

Prior to beginning work, the LPA should have a written policy for the approval of change orders and extra work orders to ensure approval is given and documented. (See 7-5-4308, MCA, Procedures to Modify a Contract) It is important to distinguish between actual changes to the contract work, change orders, and normal changes in quantities that may occur.

Whenever a change in the contract documents (plans and/or specifications) is required, the LPA shall prepare a change order. Examples of contract changes include changes to the contract requirements, design or scope of an approved project. The change order shall include a detailed explanation for the required change. The explanation shall include the costs associated with the change. Change orders must be numbered in order. To ensure eligibility for FHWA participation, all change orders should be discussed in advance with the District Liaison. In the case of emergency situations, verbal approval may suffice, but must be followed by submission of the written change order within ten calendar days.

**MDT approval is required prior to the commencement of the physical work on the MDT maintained system. Contact the CTEP District Liaison to review the proposed change order work.**

Copies of all change orders must be forwarded to CTEP. No reimbursement will be approved for change order work until a copy of the change order is received by CTEP. The LPA and contractor must retain signed copies of all change orders.

### **Inspection**

The LPA or their consultant must monitor construction activities. Daily inspections may not be required, however, it is expected that the construction engineer or architect will visit the site at key times during the construction period. The LPA is ultimately responsible for ensuring and documenting that contract requirements are achieved.

Before requesting the final payment, the LPA must conduct a final inspection of the work. Additionally, there should be a determination of whether all Federal and State requirements (e.g. labor standards) have been satisfied, and all contract files are complete. When the LPA accepts the project after the final inspection, it is expected that the LPA will issue the contractor a Certificate of Substantial Completion, **Exhibit 7-7**. This certificate is used between the LPA and the Contractor; MDT is not a signatory to this certificate and **does not** need a copy.

When all construction items are complete, accepted and project documentation requirements have all been met, the LPA can petition the MDT for final project acceptance and payment. Contact the CTEP District Liaison to review the project records and initiate the Certificate of Completion process.

### **Incidental Construction Account Activities**

The Incidental Construction (IC), account is established to pay the costs related to the physical relocation of existing utilities to be performed by a utility company or railroad company. This work generally occurs prior to awarding the main construction contract. During the preliminary engineering phase of the project, MDT must approve the plans and specifications for the IC work.

The FHWA IC account agreement is established by the estimated agreement amount. Subsequent changes in the actual cost of the project may require changes to the CTEP Project Specific Agreement (PSA) and/or the FHWA federal-aid program agreement. While the LPA can approve changes to the utility agreement, the MDT and the FHWA will make the final determination of eligibility for federal-aid cost participation.

A copy of the utility agreement between the LPA and the affected utility must be provided to the CTEP Bureau prior to the commencement of work.

For more information, refer to the Utilities Checklist, see **Exhibit 5-4**.

IC work must be monitored to ensure adherence to the agreement provisions.



Contact CTEP if Utilities within the federal-aid right of way will be affected by your project. A “Fast Process Utility Agreement” between MDT and the utility company may be required.

### **Construction Account Activities**

The FHWA construction agreement amount is established by the contract award amount. Subsequent changes in the actual cost of construction will require a modification to the CTEP PSA and/or the FHWA construction agreement. While the LPA can approve changes to the construction contract, MDT and the FHWA will make the final determination of eligibility for federal-aid cost participation.

### **LPA Construction (Force Account) Activities**

Force Account refers to the approved reimbursable expenditures for LPA personnel, equipment and materials. FHWA limits reimbursable expenditures of local agency personnel and equipment to the local share of the project costs.

The use of volunteers can be utilized to lower project costs. The LPA must provide staff supervision of the work to ensure safe and effective work methods are used. However, volunteer work is not reimbursable as a hard-dollar expense to the project. Liability issues regarding volunteer labor should be discussed with LPA legal counsel.

LPA construction expenses will usually be accounted for by time, materials and equipment used. CTEP will review, on a project-by-project basis, the type and amount of requested force account activities that are eligible for federal reimbursement. FHWA concurrence is required on force account determinations.

- **Time:** LPAs can be reimbursed for the federal share of the cost of staff time attributable to construction work. Time must be documented for each day. An LPA Force Account Form, **Exhibit 7-8**, is located at the end of this chapter and should be used to track expenses.
- **Material:** LPAs can be reimbursed for the federal share of the cost of materials attributed to the construction work. Expenses for local agency furnished materials will be determined by actual invoice or fair market value. Procurement of materials must adhere to federal, state and local agency regulations. See Request for Quotation form, **Exhibit 7-9**.
- **Equipment:** When it is determined that a portion of the construction work can be completed with LPA equipment an Equipment Rental Rate Determination Form, **Exhibit 7-10**, must be completed. A separate form

must be completed for each piece of equipment to be used. Submit the forms with the equipment data to CTEP and MDT will calculate the equipment rates.

**BE SURE TO OBTAIN WRITTEN APPROVAL FROM MDT PRIOR TO SOLICITING QUOTES OR PURCHASING THE MATERIAL.**

MDT requires that LPA follow prudent purchasing practices. Because of the public “visibility” of most federal-aid projects, maintaining a high level of public confidence regarding the expenditure of all public funds is vital, even for the purchase of seemingly small items or services.

**Maintain Records**

The LPA should maintain a set of contract files that contain the following:

- Project cost estimates
- Evidence of easements and acquisitions
- Bid documents, including required civil rights, labor and other provisions
- Evidence of bid advertising
- Minutes of bid opening including tabulation of bids
- Evidence of low bid review
- MDT concurrence in award letter
- Notice of award
- Executed contract documents with attachments
- Minutes of pre-construction conference
- Notice to proceed with contracted construction
- MDT authorization to obtain quotations
- Evidence of quotation review (tabulate quotes received)
- MDT authorization to proceed with procurement
- Monitoring and daily inspection reports
- Contractor’s weekly payroll and signed statement of compliance
- Records of construction worker interviews
- Evidence of any violations and resolution of violations
- Evidence of materials acceptance and testing as required
- Evidence of final inspection
- Notice of acceptance of work
- Lien releases from all contractors and suppliers
- Evidence of disposition of outstanding claims
- LPA Daily Force Account Forms (**Exhibit 7-8**)

## Closeout

The Certificate of Completion, **Exhibit 7-11**, must be completed by the LPA and submitted to the MDT District Liaison. The LPA and MDT use this certificate; it should not be confused with the Certificate of Substantial Completion. The Certificate of Completion must accompany the request for the final MDT acceptance review. The Certificate of Completion must not be submitted until all reimbursement requests are made and approved. **The LPA is responsible for processing contractor payments as specified in the contract documents.**

The completed Certificate of Completion must be supported by documentation located in the various project files (tables and charts should be used to summarize information in each file when possible).

## Summary

Construction Engineering (CE) is the administration and oversight of the construction contract to ensure compliance with the contract documents and applicable federal or state requirements. CE activities are the responsibility of the LPA and/or consultant acting as the owner's representative. Such activities include, but not limited to, the following:

- Selecting qualified consultants in accordance with federal, state and local requirements for professional services.
- Holding a pre-construction conference to inform the prime contractor and all subcontractors performing work of their obligations including labor standards and civil rights obligations.
- Providing the required notices when initiating construction activities.
- Processing change orders and pay requests.
- Monitoring DBE, EEO and labor requirements.
- Maintaining accurate records of force account work items.
- Monitoring and documenting contractor activities and performing quality assurance throughout the construction period to ensure contract work items are completed in accordance with the contract documents.
- Conducting the final inspection and filing the required notices and reports with the appropriate agencies.

Construction (CN) and Incidental Construction (IC) account activities are also discussed in this chapter.

- Time, material and equipment for force account work can be documented using **Exhibit 7-8** through **7-10**.
- Be sure to get prior CTEP approval before doing force account activities.
- The IC account is used for relocation of existing utilities.

PROJECT NAME:

PROJECT NUMBER: STPE\_\_\_\_\_ ( )

## CONSTRUCTION CHECKLIST (Construction Engineering activities)

### Construction Administration - *Prior To Start Of Construction*

The Local Public Agency (LPA) may hire a consultant or have a qualified in-house person perform project construction oversight. If these costs are to be reimbursed with Federal-aid funds or to be counted toward the LPA match, consultants must be selected in compliance with this program consultant contracting requirements. *The LPA must:*

1. Issue Notice of Award and Execute Contract: Once MDT approves the bid award in writing, have contractor sign contract and furnish performance bond and insurance certificate as required under Montana Law and detailed in the Notice Of Award letter (18-2-201 MCA).
2. Notify MDT of the responsible Architect or Engineer in charge of work.
3. Identify employee or elected official in responsible charge of work. This must be someone with sufficient knowledge to make decisions and to ensure all federal requirements are met.
4. Issue Notice to Proceed - Issue a written notice to the contractor to proceed and state the date on which contract time begins.
5. Hold Preconstruction Conference (Labor Compliance, EEO Contract Compliance, DBE Contract Requirements, etc.) and requested MDT District Liaison attendance.

### Construction Administration - *After Construction Starts:*

1. Document quantities to support progress payments, which are:
  - Auditable.
  - Signed and dated by inspector.
  - Demonstrate that work was done in reasonable conformity to plans and specifications.
  - Maintain a diary of inspection.
2. Evaluate and maintain record of contract time.
3. Decide questions on quality and quantity of work and compliance with State and Federal requirements.
4. Receive weekly-certified payrolls and statements of compliance from prime and each subcontractor, when applicable.

PROJECT NAME:

PROJECT NUMBER: STPE\_\_\_\_\_ ( )

5. Assure all personnel working on project site are carried on contractor certified payroll at appropriate wage rate and classification, if applicable.
6. Assure DBE is actually supervising and performing designated work.
7. Assure employment goals contained in EEO Special Provisions are accomplished by the prime contractor and each subcontractor. Goals are based on number of hours worked (not number of workers) in each craft employed on project.
8. Assure EEO provisions in Part II of FHWA 1273 are implemented.
9. Receive, investigate, and resolve labor complaints or other labor violations, when applicable.
10. Maintain all contractor certified payrolls for three years after completion when applicable; and
11. Extra work, if needed, must be supported by:
  - Detailed cost estimate and independent analysis by LPA.
  - Approval from MDT for change in scope of contract.
  - Secure Approval From MDT before overrunning contract award amount

*Contract Administration - When Project is Determined to be Substantially Complete*

1. Perform final inspection with MDT District Liaison. Certify that work is complete and conforms to plans and specifications. The LPA must prepare and sign the LPA Certificate of Completion, see Chapter 9.
2. Prepare final payment estimate and be sure to:
  - Calculate quantities.
  - Check quantity calculations and documentation.
  - Certify that materials conform to specifications.
  - Certify labor compliance.
  - Submit final payment to contractor after securing the release of all claims.
3. Submit billing to MDT as follows:
  - Submit estimate of work completed to MDT not more than once each 30 days.
  - The estimate should show quantity and amount of each item completed during the period, totals complete to date and total payment for the period.

PROJECT NAME:

PROJECT NUMBER: STPE\_\_\_\_( )

- MDT will reimburse the participating percentage of the invoice estimate, minus retainage, up to the limit of federal-aid funds authorized, by account. The LPA must withhold gross receipts fee and other statutory fees from contractor payments.

**MAINTAIN DOCUMENTATION OF ALL COMPLIANCE ACTIVITIES FOR THREE YEARS AFTER OFFICAL CLOSURE DATE NOTED ON THE CLOSURE LETTER. LETTER IS RECEIVED FROM THE MDT.**

## **PRE-CONSTRUCTION CONFERENCE PLANNING GUIDE**

### **PRECON CONFERENCE PLANNING**

1. Identify and notify conference participants, including MDT District Liaison, of the time and place of the pre-construction conference
2. Prepare the materials that will be needed for the conference (e.g. agenda, notes, forms and posters, roster of expected participants, and current, approved wage determination)
3. Organize the materials into individual packets for each conference participant

### **PRE-CONSTRUCTION CONFERENCE MODEL AGENDA**

1. Identify the official representatives of participating organizations and how they can be contacted for official roster (include with minutes).
2. Identify the responsibilities of the architect or engineer, if applicable (responsibilities may include construction monitoring, review of contractor payrolls, and certification of progress payment request, etc.).
3. Identify the responsibilities of the Local Public Agency (LPA) (responsibilities may include on-site employee interviews, Bulletin Board postings inspection, and resolution of labor complaints, etc.).
4. Identify the responsibilities of the contractor (responsibilities include, bulletin board postings, conformance to prevailing wage determination, and other labor standards, civil rights regulations, DBE requirements, materials guaranty, and timely submission of required reports, etc.).
5. General discussion of contract terms (e.g. timing of requests for partial payments, etc.).
6. Schedule for construction completion (contractor should provide timeframes for sequences of major construction activities from beginning of construction to final project completion).
7. Subcontractors (primarily the same responsibilities as contractor e.g. prevailing wage rates and labor standards, written contracts are required for all subcontracted work, etc.).
8. Project inspection (responsibilities of LPA and A/E should be discussed).
9. Compliance with federal labor standards (refer to checklist supplement).
10. Compliance with civil rights regulations (refer to checklist supplement).
11. Notices that are required to be posted (refer to checklist supplement).
12. Forms the contractor must submit (refer to checklist supplement).

**Attached is a description of requirements from our Civil Rights Bureau regarding EEO and labor compliance issues. It can be included with your Preconstruction meeting notes. A copy of this form can be found on the Civil Rights website (<http://www.mdt.state.mt.us/civilrights>).**

# FEDERAL AID

## CTEP Civil Rights Agenda

(Attach to Engineer's pre-construction minutes)

Available from Montana Department of Transportation (MDT) Civil

Rights

Wage Rates

CRB Manual

Postings

Equal Employment Opportunity (EEO) folder

CTEP Investigations

Request for Authorization of Additional Classification and Rate

DBE Newsletter

Title VI Rights Pamphlet



*If you have questions during the preconstruction conference, please call Bill Anderson at (406) 444-6334, (406) 431-6334, or email him at "bianderson@state.mt.us."*

## **FEDERAL - AID CTEP PROJECTS**

### **Civil Rights Agenda Part 1: Labor Compliance Part 2: EEO**

Attendees: \_\_\_\_\_

Date: \_\_\_\_\_

On-System: \_\_\_\_\_ or Off-System: \_\_\_\_\_

Project: \_\_\_\_\_

Location: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Sub-contractor (written contract?): \_\_\_\_\_

District: \_\_\_\_\_

Information Presented by: \_\_\_\_\_

MDT's Liaison: \_\_\_\_\_

Local Project Manager: \_\_\_\_\_

Estimated Start Date: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

### **Part 1: Labor Compliance**

- ☐ **Work performed by second tier contractors requires an approved sub-sub-contract excepting equipment rental agreements. (Prime → Sub → Sub-sub)**

**WRITTEN AGREEMENTS**

#### **Zone(s):**

["... determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following towns (see General Wage Decision) to the center of the job." Exemptions from zone pay include: Electricians, Line Construction, Painters, and Welders. Is the zone(s) specified on contract? If multiple sites for the project, each site can be listed with the different appropriate zone.]

This federal aid project is located in **zone** \_\_\_\_\_ (Is it specified in contract?)

Is there is to be a **pit or a batch plant** associated with this job? \_\_\_\_\_

Is it covered by **Davis Bacon** wages? \_\_\_\_\_

**Payrolls:** *(Does "Site of Work" Apply? If yes, see **Site of Work** section below.)*

1. Original copy of certified payroll to Project Manager
2. Statement of Compliance must be attached to each certified payroll. Be sure the appropriate fringe benefit box has been checked and that the statement is signed.
3. Payroll records must be retained by the contractor for a period of three years.
4. Owners and other salaried supervisors must be shown on the payroll when performing duties on the project site.
5. Who is **Contractor's project manager**? \_\_\_\_\_
6. What is the **anticipated workday**? \_\_\_\_\_

**Fringe Benefits:**

1. The contractor has three options:  
  
a.[ ] **Fringe Benefits may be paid directly to employees each week, in cash, or**  
b.[ ] **Fringe Benefits may be paid to a trust fund (approved by U.S.DOL), or**  
c.[ ] **Fringe Benefits may be paid in a combination of a. and b. above.**

**Name of trust fund?** \_\_\_\_\_

2. If fringe benefits are paid to a trust fund for which the employee is not a member, the contractor is obligated to provide information to the employee concerning access to the trust fund.

**Work Week:**

General Wage Decisions (attached to the contract) set the Base pay + zone pay + fringe benefits which equals the total wage package. A contractor may opt to pay more than the wage package. 40 hours is a standard workweek -- on the 41st hour, overtime (time and a half) must be paid

Overtime is based on 1.5 X base rate + zone pay, or 1.5 X the higher wage rate the contractor has chosen to pay. Fringe benefits are always paid straight time. Fringe benefits will be indicated on the certified payroll as paid in cash and/or to an approved bona fide fund. In both straight and overtime situations, worker must be paid at least what they would have earned under Davis-Bacon wages.

### Legal Deductions:

1. The only legal deductions are FICA (Social Security & Medicare), State (SIT), and Federal (FIT) Taxes.
2. Deductions other than those mentioned above must be accompanied by a deduction authorization signed by the employee. The signed and dated authorization must include the specific weekly dollar amount and the specific reason for the deduction.
3. If a deduction for child support or a garnishment occurs, a letter on the company's letterhead explaining the judicial decree must accompany the **first** payroll on which the deduction occurs.

### Shifting:

Shifting from the wage rate to the fringe benefits to cover higher fringe benefits than those in the contract is permitted if it is a requirement of a bargaining agreement or other trust fund agreement. The wage/fringe package must remain the same or higher than that in the contract wage rates. Overtime must be calculated on the published Davis-Bacon wage rate or the wage actually being paid if higher than the published rate. Once the overtime rate is calculated, shifting can then occur.

### Work Classifications:

**What work classifications will be working on this project?**

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**Are those worker classifications to work on this project covered by the applicable wage decision? [ ] Yes [ ] No**

**If no is answered above, does a request for authorization of additional classification and rate need to be submitted? [ ] Yes [ ] No**

1. Flaggers are covered by Davis-Bacon Wage Rates. (All flaggers must be certified)
2. Foremen and supervisors working with the tools of the trade more than 20% of the time must be paid a minimum of the appropriate wage rate for the work they are performing. All foremen and superintendents **must** appear on the certified payroll, even if salaried.
3. Employees working at other than their assigned classifications for 20% or more of their time must be paid for the work they are performing or at the higher of the two rates.

4. Employees **must** be classified and paid for the work they are performing. The classification codes shown on the payroll must clearly identify the work being performed. **We request that all contractors use the MDT groups from the contract wage rates.** If your computer software will not print them, please write them in.

If the contractor uses a classification system other than what is provided in the contract, it must be easily comparable to the MDT group system and must identify the wage decision number. Two copies of the contractor's code conversion sheet must be provided with the FIRST payroll submitted for each project.

**Example:**

<u>Contractor Code</u>		<u>MDT Code</u>
Common laborer	=	Laborer, group 2

**Site of Work:**

1. The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, other adjacent or nearby property used by the contractor or subcontractor which can be reasonably said to be included in the site.
2. The site of work definition includes material or supply sources, tool yards, job headquarters, etc. in the site of the work only where they are dedicated to the covered construction project AND are adjacent or virtually adjacent to the location where the building or work is being constructed.
3. Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants and tool yards whose locations and continuance in operation are determined wholly without regard to a particular federal-aid contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards of a commercial supplier or material man that are established by a supplier of materials for the project before the opening of bids and are not adjacent or virtually adjacent to the project site are not included in the site of work. Such permanent, previously established facilities are not a part of the site of work even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

4. Delivery of items such as sand, gravel, ready-mixed concrete, etc., when performed by a bona fide material supplier serving the public are activities not covered by the Davis-Bacon and Related Acts (DBRA). Therefore, in this instance, material supplier employees are not subject to DBRA labor standards unless such transportation occurs between the construction work site and a dedicated facility located adjacent or virtually adjacent to the construction site.
5. Fabrication plants, batch plants, and/or borrow pits of a commercial supplier or material man which **are not established** prior to bid opening and are dedicated to the project and adjacent or virtually adjacent to the project site are covered by Davis-Bacon (such as portable batch plants). Personnel employed by the material supplier in this case must be paid the appropriate rate of pay.
6. If there is a question as to whether a material supply location is covered by DBRA, please call Bill Anderson at the Civil Rights Bureau at 444-6334.

**Additional Comments:** \_\_\_\_\_

## **PART 2: EEO CONTRACT COMPLIANCE**

### **PRE-BID ISSUES**

- Do the prime contractor and any subcontractors with contracts of \$10,000 or more have a current annual EEO submission? Annual EEO Submissions must be received in Helena and approved prior to the contractor beginning work on the project site.
  - a. The EEO Submission consists of a Company Policy Statement, EEO Officer Designation, Company Discrimination Complaint Procedures, and Complaint Form. (This is available on the MDT Internet site at Civil Rights/ EEO Contract Compliance/ EEO Submissions.)
- Have **wage rates** been included with all pre-bid advertising documents? This is required for all federal aid contracts of \$2,000 or more.
- Has the **PR 1273** (Required Contract Provisions – Federal – Aid Contracts) been included with all pre-bid advertising documents?
- Have Americans with Disabilities Act (**ADA**) and Disadvantaged Business Enterprises (**DBE**) regulations been considered and resolved?

### **POST-BID ISSUES**

- Wage rates and the PR 1273 must be **physically affixed** to the **prime and any sub-contracts**; they cannot just be referenced in the contract. This is the City/County's responsibility to assure it is accomplished.

- Schedule the Preconstruction conference. Invite the prime contractor, the CTEP Liaison, and the MDT Compliance Specialist (Bill Anderson @ 444-6334).
- **The Prime Contractor's EEO Officer is \_\_\_\_\_.** This person is expected to:
  - attend compliance reviews;
  - demonstrate what affirmative action the prime and each subcontractor have taken;
  - provide documentation of **all** recruitment efforts (including subcontractors).
    - Minority and/or female referral sources can be obtained from Civil Rights. The U. S. Department of Labor has held that it shall be no excuse if the union with which the contractor has a bargaining agreement fails to refer a minority or female.
    - Obtain the current annual EEO submissions from the prime contractor and any subcontractors that will be working on the job prior to any work starting. This is required for all federal aid contracts of \$10,000 or more.

#### **AFTER WORK HAS BEGUN**

- Is the project site **bulletin board** in place with all the correct postings from the prime contractor and each subcontractor? Bulletin Boards must be located in an area **accessible** to all employees. Three ring notebooks can only be used if the work is *mobile* such as fencing, striping, or traffic control. Subcontractors may use the Prime's bulletin board as long as their own information is posted on it.
- **Contents of Bulletin Board:** Posters: EEO Is The Law, Wage Rate Information, and Dual Employment; Current Annual EEO Submission: Company Policy Statement, Identification and responsibility of the EEO Officer, Complaint Procedures and Complaint Form; Contract Info: FHWA 1273 (Required Contract Provisions) and Davis-Bacon Wage Rates for this project and, DBE Hotline poster.
- **Field Inspections** will be conducted with LC-1's during working hours by the Civil Rights Bureau staff or the CTEP project manager.
- **On-site EEO Meetings** will be conducted weekly ☐; every other week ☐; or monthly ☐. Minutes and attendance roster must be provided to the MDT Inspector. The MDT Inspector shall be notified when the EEO on-site meeting will be held.
- Are the prime and each subcontractor submitting **certified payrolls** on a weekly basis?
- Have the payrolls been checked weekly to ensure the right wages have been paid to each person employed on the project site?
- Is the contractor employing a core crew or did new employees get hired for this project? If yes, what **good faith efforts** were made to recruit qualified minority and female employees?

QUESTIONS?

Contact Bill Anderson, Compliance Specialist, at

(406) 444-6334 or [bianderson@state.mt.us](mailto:bianderson@state.mt.us).

Additional Comments: \_\_\_\_\_

**FORM LC-1** (REV. 1/03) EEO & LABOR COMPLIANCE SPOT CHECK  
255-3450

PROJECT NO. \_\_\_\_\_  
DESIGNATION \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_

DISTRICT \_\_\_\_\_  
DATE \_\_\_\_\_  
INTERVIEWER \_\_\_\_\_

PRIME \_\_\_\_\_

SUBCONTRACTOR \_\_\_\_\_

LC-1 MUST BE ATTACHED TO CORRESPONDING PAYROLL  
INTERVIEWS ARE TO BE CONDUCTED THE 2<sup>ND</sup> & 4<sup>TH</sup> WEEK AND THEN ONCE A MONTH  
REFER TO CRB MANUAL, SECTION II. The yellow copy is the FPM file copy.

EMPLOYEE NAME	CLASSI- FICATION	RATE OF PAY	WORK PERFORMED	1. ATTEND EEO MTGS 2. EEO OFFICER 3. COMPLAINT FILING 4. BULLETIN BOARD CHECK IF KNOWN	A-MIN B-OTHER C-FEMALE D-DISAD.
1.				1 2 3 4	
2.				1 2 3 4	
3.				1 2 3 4	
4.				1 2 3 4	
5.				1 2 3 4	
6.				1 2 3 4	
7.				1 2 3 4	
8.				1 2 3 4	
9.				1 2 3 4	
10.				1 2 3 4	
11.				1 2 3 4	
12.				1 2 3 4	
13.				1 2 3 4	
14.				1 2 3 4	
15.				1 2 3 4	
16.				1 2 3 4	
17.				1 2 3 4	



## CERTIFICATE OF SUBSTANTIAL COMPLETION

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Federal Aid Project No. \_\_\_\_\_ LPA/AE Project No. \_\_\_\_\_

Federal Aid Project Name \_\_\_\_\_

---

Contractor \_\_\_\_\_

Contract for \_\_\_\_\_ Contract Date \_\_\_\_\_

---

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To \_\_\_\_\_  
OWNER

And To \_\_\_\_\_  
CONTRACTOR

---

The Work to which this Certificate applies has been inspected by authorized representatives of the OWNER, the CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

\_\_\_\_\_  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of the CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by the CONTRACTOR within \_\_\_\_\_ days of the above date of Substantial Completion.

The responsibilities between the OWNER and the CONTRACTOR for security, operation, maintenance, heat, utilities, insurance, and warranties shall be as follows:

RESPONSIBILITIES:

OWNER:

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CONTRACTOR:

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The following documents are attached to and made a part of this Certificate:

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This certificate does not constitute an acceptance of work not in accordance with the Contract Documents nor is it a release of the CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

---

---

Executed by ENGINEER on \_\_\_\_\_

\_\_\_\_\_  
ENGINEER

By \_\_\_\_\_

CONTRACTOR accepts the Certificate of Substantial Completion on \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By \_\_\_\_\_

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_

\_\_\_\_\_  
OWNER

By \_\_\_\_\_

## LPA STATEMENT OF DAILY FORCE ACCOUNT WORK

Project No.: STPE \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_  
 Project Name: \_\_\_\_\_ Date \_\_\_\_\_  
 Detailed Description of Work: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### LABOR

Employee Name	Classification	# of Hrs	Rate \$	Expended \$

**Daily Labor Cost**

**Total Labor Cost to Date**

### EQUIPMENT

Equipment	# of Hrs	Rate \$	Expended \$

**Daily Equipment Cost**

**Total Equipment Cost to Date**

### MATERIALS

Materials	Unit	Quantity	Unit Price	Expended \$

**Daily Material Cost**

**Total Material Cost to Date**

LPA Project Manager (hour approval)	Title	Page Total	
Local CTEP Administrator (rate approval)	Title	Total Force Account to date	

## REQUEST FOR QUOTATION

VENDOR: \_\_\_\_\_  
\_\_\_\_\_

BILL TO: \_\_\_\_\_  
\_\_\_\_\_

## REQUEST FOR QUOTATION

**CIVIL RIGHTS:** The contractor must, in performance of work on this contract, fully comply with all applicable federal, state or local laws, rules and regulations. The contractor must comply with the provisions of all appropriate federal laws, including Title VI of the Civil Rights Act of 1964. Any subletting or subcontracting by the contractor subjects subcontractors to the same provisions of the appropriate federal laws, including Title VI of the Federal Civil Rights Act of 1964. In accordance with 49-3-207, MCA, the contractor agrees that the hiring of persons to perform work on this contract will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disabilities or national origin by the persons performing the contract.

Local Public Agency: \_\_\_\_\_  
Project Number: STPE \_\_\_\_\_  
Project Name: \_\_\_\_\_

PROJECT SITE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sealed bids will be opened at \_\_\_\_ a.m./p.m., on \_\_\_\_\_, in \_\_\_\_\_, Montana, as per the terms, conditions, requirements, and specifications detailed herein.

Enclose as evidence of good faith and as a guaranty that the bidder will enter into a contract a proposal guaranty in the amount of at least ten percent (10%) of the bid, made unconditionally payable to the Local Public Agency of \_\_\_\_\_, which at the bidder's option may be cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a National Banking Association located in the State of Montana. The proposal guarantee shall be forfeited to the Local Public Agency, if the bidder shall fail or refuse to comply with the provisions or the specifications detailed herein.

Questions may be directed to \_\_\_\_\_, at (406) \_\_\_\_\_ - \_\_\_\_\_ in \_\_\_\_\_.

Please respond so that your sealed bid will be delivered before \_\_\_\_ a.m./p.m., \_\_\_\_\_, to:

Local Public Agency Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Terms, Conditions, Requirements, and Specifications (drawings attached):

## EQUIPMENT RENTAL RATE DETERMINATION

Federal-Aid Project Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

### EQUIPMENT DATA

Manufacturer \_\_\_\_\_ Year \_\_\_\_\_ Model/Type \_\_\_\_\_

Rated Capacity or Size \_\_\_\_\_ Serial No. \_\_\_\_\_

Engine Type (gas/diesel/etc.) \_\_\_\_\_ Horsepower \_\_\_\_\_

Transmission (i.e. 4 spd) \_\_\_\_\_ Attachments/Accessories \_\_\_\_\_

Remarks \_\_\_\_\_

Date submitted \_\_\_\_\_ by \_\_\_\_\_

### RATE DETERMINATION

<u>BLUE BOOK VOL#</u>	<u>MACHINE (SECT, PAGE)</u>	<u>ATTACHMENT (SECT, PAGE)</u>
-----------------------	-----------------------------	--------------------------------

Current Monthly Rate	(A) _____	(A) _____
----------------------	-----------	-----------

Regional Adj. Factor	(B) _____	(B) _____
----------------------	-----------	-----------

Adj. Factor for Year of

Manufacture 20 _____	(C) _____	(C) _____
----------------------	-----------	-----------

IF DISCONTINUED ONLY

(C/D) _____	(C/D) _____
-------------	-------------

Adj. Factor for last Year

of Manufacture 20 _____	(D) _____	(D) _____
-------------------------	-----------	-----------

Adjusted Bare Rate	\$ _____	\$ _____
--------------------	----------	----------

Hourly Operating Rate	\$ _____	\$ _____
-----------------------	----------	----------

TOTALS	\$ _____	\$ _____
--------	----------	----------

TOTAL ADJUSTED BARE RATES \$

TOTAL HOURLY OPERATING RATES \$

**TOTAL HOURLY RATE \$**

a)  $A/176 \times B \times C =$  \_\_\_\_\_ or b)  $A/176 \times B \times [C/D] =$  \_\_\_\_\_

**MONTANA DEPARTMENT OF TRANSPORTATION  
CERTIFICATE OF COMPLETION**

\_\_\_\_\_, Montana

Date \_\_\_\_\_

Project No \_\_\_\_\_

Bid Opening Date \_\_\_\_\_

Project Name \_\_\_\_\_

Contract Award Date \_\_\_\_\_

Control Number \_\_\_\_\_

Work Started \_\_\_\_\_

County \_\_\_\_\_

Work Completed \_\_\_\_\_

I, the Contractor, hereby certify that on \_\_\_\_\_2\_\_\_\_, the project has been fully completed and I was in compliance with all **Civil Rights and DBE Requirements**, have **paid all labor and all suppliers in full, and all construction and materials used were in compliance with the project Plans and Specifications**, as authorized by the MDT. The LPA, Consultant and MDT Representatives made a final inspection of the project on \_\_\_\_\_2\_\_\_\_. We request MDT's acceptance of this project.

\_\_\_\_\_  
Contractor Date

\_\_\_\_\_  
Local CTEP Administrator Date

**CONCURRED:**

\_\_\_\_\_  
District Liaison Date

\_\_\_\_\_  
CTEP Engineer Date

**ACCEPTED:**

\_\_\_\_\_  
Administrator, Engineering Division Date



2550 Prospect Avenue, PO Box 201001, Helena, MT 59620-1001 [www.mdt.state.mt.us](http://www.mdt.state.mt.us)

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